School Testing: Is It the Right Course?

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Raising the ante

California wrestles with the spread of gambling

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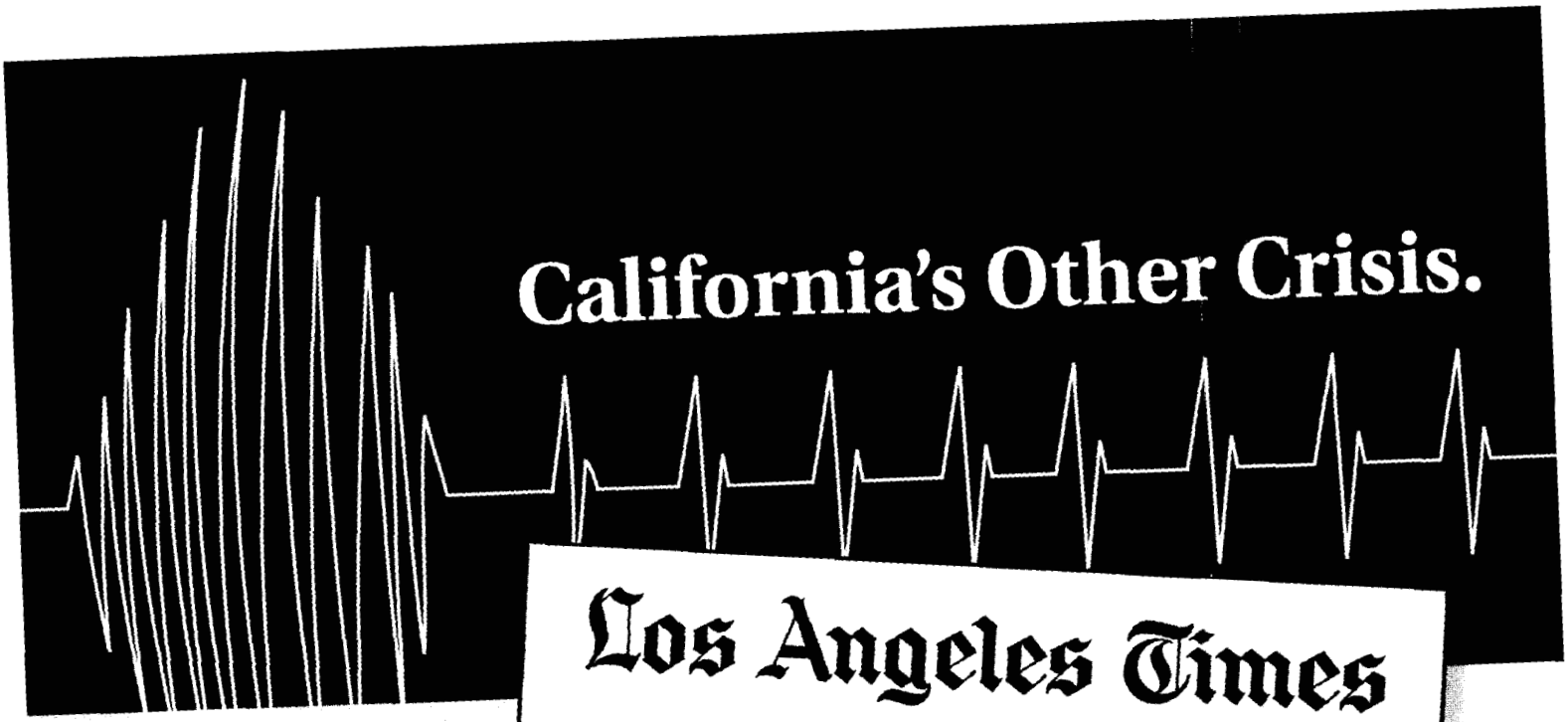
California's Other Crisis.



Los Angeles Times

...“The three public and 10 private hospitals that provide emergency services in Los Angeles County ... lost $35 million to unreimbursed care last year. It's no wonder that some are in danger of shutting down their emergency rooms.”

Los Angeles Times Editorial, August 7, 2001

Hospitals face severe financial challenges in communities throughout California as they try to both cover the cost of ambitious seismic upgrades and maintain affordable access to health care services.

The California Alliance to Preserve Hospital Access urges our state's leaders to help keep hospitals open and prevent the state's next crisis by enacting legislation that:

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Call your legislator and the Governor and let them know you support our effort to help keep hospitals open and our healthcare affordable.

www.hospitalaccess.org

CAPHA
California Alliance to Preserve Hospital Access

A coalition of consumers, businesses and health care professionals.

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California Business Roundtable
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California Medical Association
California Healthcare Association
Alliance of Catholic Health Care
Association of California Nurse Leaders
Hospital Council of Northern and Central California
Healthcare Association of Southern California
Healthcare Association of San Diego and Imperial Counties
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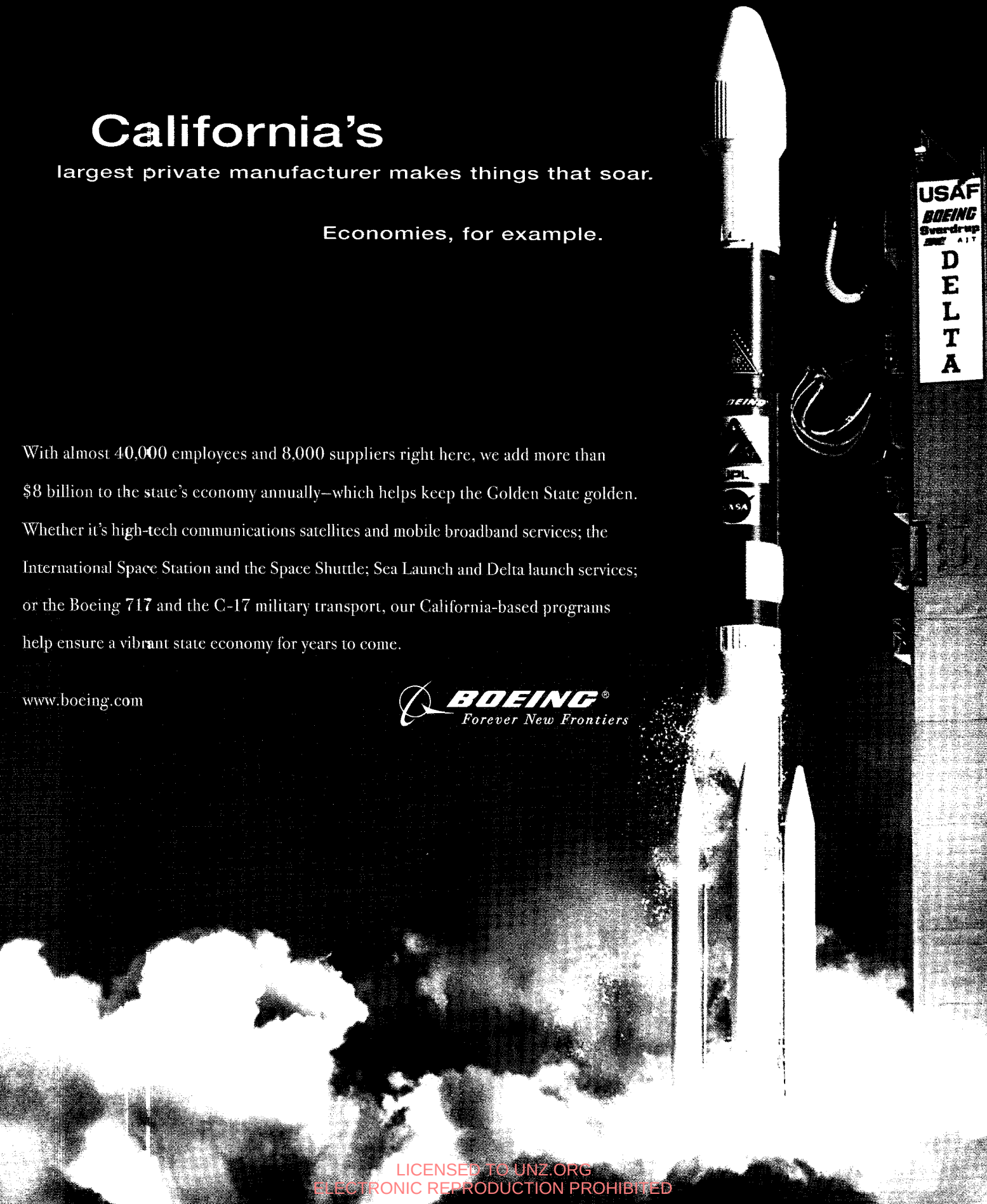
Economies, for example.



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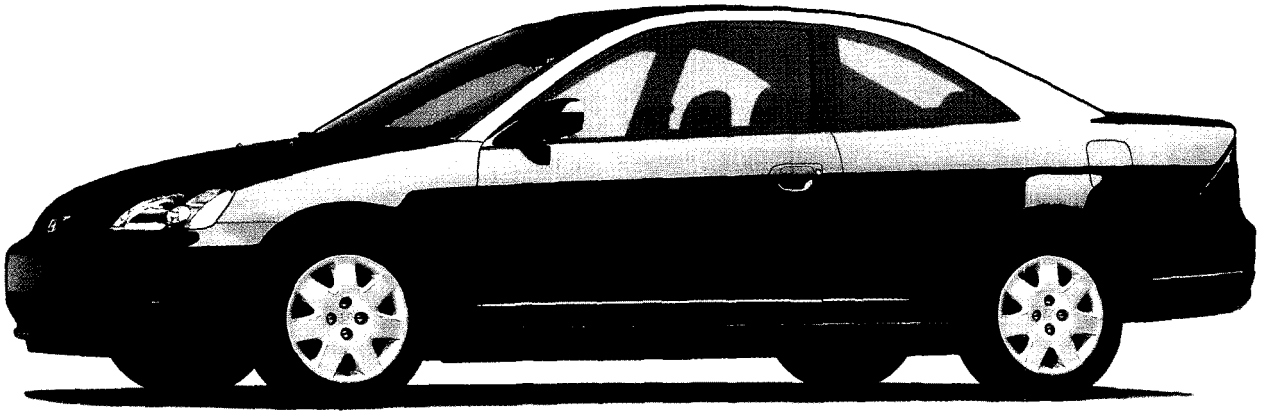
Presenting Honda's technologically advanced oxymoron.



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california JOURNAL

September 2001
Volume XXXII, Number 9

Upfront
A new editor;
a tribute to Maureen Reagan

Rostrum
Readers sound off

Talking Points
Curse of CJ's cover; Gay L.A.

D.C. Perspective
A Bay Area congressional feud

Gaming

By A.G. Block

Gambling operations established by Native American tribes provide one of this country's great moral dilemmas. The tribes have gained tremendous wealth and political clout through development of large-scale gambling resorts. Thus far, Indian gaming has been confined to tribal land. But there are plans afoot to spread beyond reservations, in some cases to the heart of California's urban cities on land not now considered tribal. The state has blessed reservation gaming by negotiating compacts with the tribes. Should it also bless the spread of gambling beyond the reservation? Or will the state oppose such tribal expansion, adding to the long, historic list of broken treaties? In this issue, the *Journal* explores the spread of Indian gaming and its impact on surrounding communities, as well as on other California industries that also depend on the gambler's dollar — card clubs and race tracks.

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By James P. Sweeney

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As tribal gaming expands, California's traditional card clubs struggle to survive.
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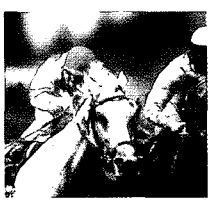
Beset by a variety of competitors, California's horse-racing industry is limping down the stretch.
By Claudia Buck



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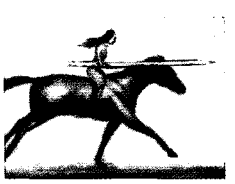

38 **Battle over ballot signatures**
The folks who solicit signatures for ballot initiatives once again have squared off against retailers trying to protect their private property rights. The result could affect your ballot.
By Charles Price

Cover by Dagmar Thompson

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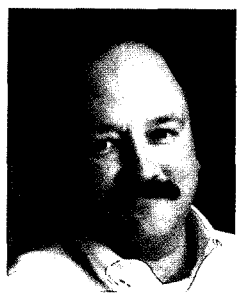
umbrage

A new editor. David Lesher has been named editor of *California Journal.* Lesher will assume his new post after 14 years at the *Los Angeles Times,* where he most recently served as assistant national editor for politics and helped coordinate coverage of the 2000 presidential campaign. For the past 10 months, Lesher has been on leave from the *Times* as visiting journalist at the Public Policy Institute of California, where he studied technology and politics. He will take over as *Journal* editor on November 1. In addition to the *Times,* Lesher has worked for the *Hartford Courant* and *Los Angeles Herald Examiner* during a journalistic career that has spanned more than 20 years. He came to the *Times* in 1987 as a reporter in the paper's Orange County bureau. He began political reporting in Orange County in 1989 and subsequently covered the 1992 presidential race and 1994 U.S. Senate campaign between Dianne Feinstein and Michael Huffington. He served in the Sacramento bureau from1995 to 1999, assigned to the governor's office, where he covered the 1998 gubernatorial campaign between Gray Davis and Dan Lungren. Lesher succeeds Cynthia Craft, who has become *Journal* editor-at-large.



David Lesher
Photo: Aaron Lauer

First daughter. Maureen Reagan, who died August 8 of melanoma at the age of 60, lost two tries for public office but won public admiration for her tireless campaign to promote awareness of Alzheimer's — the mind-destroying disease that afflicts her father, former President Ronald Reagan. After the feisty daughter of Reagan and actress Jane Wyman contracted deadly skin cancer five years ago, she promptly added melanoma awareness to her list of causes. Maureen Reagan often noted that she became a Republican when her father was still a Democrat. When she was a 21-year-old secretary in Washington in 1962, she wrote her father urging him to run for governor of California four years before he did, accurately predicting that he would win. Reagan was touched by the letter — in reply, he said he could be president, the earliest expression of his interest in the nation's highest office. Father and daughter differed on the Equal Rights Amendment and abortion rights, which she favored, but he was proud that she was willing to take unpopular stands, saying that she was much like him in that respect. Her support for abortion rights may have cost her a House seat in 1992 despite her father's support. She narrowly lost to conservative Los Angeles City Councilwoman Joan Milke Flores but finished well ahead of nine other Republicans. As always, she had no regrets.

Maureen Reagan in 1992

Grinch of the Month. That honor goes to state Controller Kathleen Connell, who grumped to *The Sacramento Bee* about meals provided to employees at the Department of Water Resources last January. According to *The Bee,* some of those employees were logging 20-hour days and sleeping in conference rooms in an around-the-clock effort to buy electricity for an energy-starved state. But the ever-vigilant Connell is outraged that the state paid for $3,600 worth of pizza and sushi brought in to feed them. The real outrage is Connell's insistence that employees repay the state. Most employers with a whit of compassion do whatever they can to help employees asked to work that kind of schedule. Then, again, no one has ever accused Connell of compassion.

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No peeking allowed

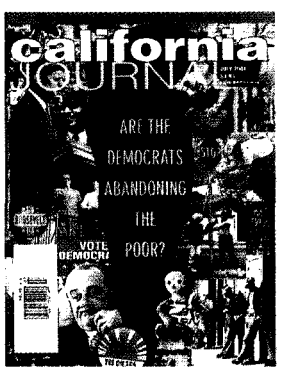
Not prone to conspiracy theories, I would never suggest that your ["Psst! Take a peek," May 2001] revelation of www.opensecrets.org has led to an insidious attack upon the site by unrepentant donors. The site has, interestingly, been unresponsive whenever I've tried to pry into my little town's political pocketbooks. I was hoping to "out" any folk who might share my political disposition. I'm quite certain I am not, as accused, the only feminist in Fallbrook. I'm left forlorn, but hoping the site recovers. Thanks for the fun article.

Kit-Bacon Gressitt
Fallbrook

Orange County

I very much enjoyed Scott Harris' article ["My Orange County," June 2001]. I travel to Orange County a lot but have never been to Santa Ana. I had a bad impression about it *because of what others said.* Now, I intend to check it out. Noel Brinkerhoff's story ["GOP defends its turf," June 2001] was also well written and informative. I have been out of politics for a few years, and I am a long way from Orange County so I rely on the *California Journal* to keep me current.

Mike Villines
Clovis



I really enjoyed reading Scott Harris' article on Santa Ana. I am an Orange County refugee myself. I lived in La Habra from 1962 until my high school graduation in 1974. Certainly, my old hometown has changed dramatically in terms of demographics and politics since I left. It's encouraging to read how Santa Ana has been able to achieve meaningful synergies from the variety of cultures it contains, thanks to the vision of its civic leadership.

Kevin M. Tamaki
Los Angeles

Gridlock takes its toll

I read with great interest your article on Orange County's toll roads ["For Whom the Road Tolls," June 2001]. Like every other public policy problem, our freeway gridlock defies an easy, quick fix. If we have learned anything from the current energy crisis, it ought to be that protracted inaction in the face of a huge public policy dilemma only exacerbates the problem, prolongs the cure, and increases the ultimate cost of the solution. California, once the leader in highway construction, is at a standstill. In the past 60 years, we have experienced a 60 percent increase in population growth, while highway construction has screeched to a virtual halt. Our gridlock costs commuters 836,000 hours in daily traffic jams at an estimated cost of $7.8 million per day. Commuters in Southern California are wasting at least 82 hours per year stuck in traffic, and it takes 50 percent longer to complete a commute during rush hours.

Obviously, providing a consistent source of funding for highway projects is key to unlocking gridlock. Legislative Republicans recognized this last year when they advocated for a "pay at the gas pump" proposal to earmark approximately $800 million per year in state gas sales tax revenues for highways. The beauty of this proposal was that it provided $16 billion in new transportation revenues over the next 20 years without *the need to raise taxes or pass bonds.*

Unfortunately, less than a year later, the governor is seeking to suspend the transfer of the gas tax revenues earmarked for transportation. Instead, this money would return to the state's general fund to help backfill the billions already spent on electricity. My fear is that this "suspension" could conceivably continue into the future, which would truly be disastrous for our region's transportation infrastructure.

Just as "one size fits all" approaches will not solve California's energy crisis, significantly reducing traffic congestion will require bold ideas, creative thinking, and fresh approaches.

Lynn Daucher (R-Brea)
Assemblywoman, 72nd District

Democrats and the poor

I agree that many Democrats ["Are Democrats abandoning the poor?" July 2001] in California are failing to represent the poor. Corporations have too much power in Sacramento. Corporations do not need governmental representation. It is the poor that need government to protect them. Many bills that help the poor, but affect business, fail to get the votes needed to pass or are gutted. If a bill survives the legislative process, it may be vetoed. Governor Gray Davis has become too beholden to monied interests. I hope the governor and the Legislature work together to represent the people and not just those who attend their fundraisers.

Sean C. South
Sacramento

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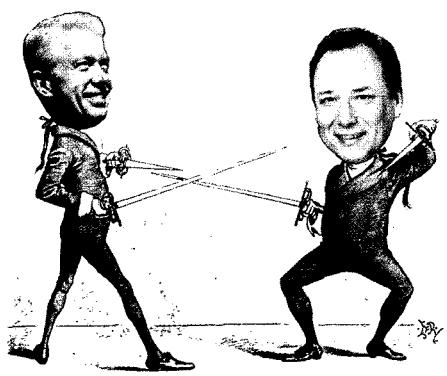
Campaign watch:

Dueling press packets

The 2002 race for governor already is white-hot. For months now, Secretary of State Bill Jones, a GOP candidate, has been flashing his rapier at Democratic incumbent Gray Davis over Davis' handling of the state's energy crisis. Lately, Jones has been jabbing at the governor over the fact that energy consultants hired by the administration also held stock in energy companies. He asked the federal Securities and Exchange Commission to investigate what Jones calls "the most widespread and systematic violation of state law by the executive branch in modern California history." It doesn't hurt Jones' quest, of course, that the federal SEC is part of a Republican administration in Washington, D.C.

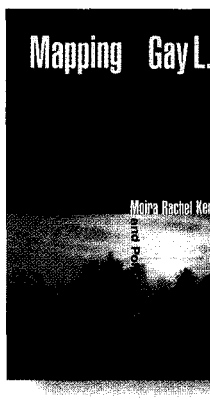


Meanwhile, Davis has parried with hard steel of his own. Davis issued a 43-page report entitled, "Bill Jones and Energy: The Rhetoric and the Record." It catalogues Jones' votes on energy issues while a state legislator from 1982 to 1994. Late last month, the governor's backers also accused Jones of illegally preparing his political attacks on state time, using his state office staff. Just wait: This jousting over ethics is only a prelude to the real clash of swords next year.

Excerpts:

From the bookshelf

Mapping Gay L.A.
The Intersection of Place and Politics
by Moira Rachel Kenney
Temple University Press



When it comes to identifying the country's focal point for politically influential gays, Los Angeles is rarely, if ever, mentioned. New York City's Greenwich Village and San Francisco's Castro District are more commonly highlighted. But Moira Rachel Kenney, research director at the Institute of Urban and Regional Development at the University of California, Berkeley, dispels the common oversight of Los Angeles and its importance in the gay political dynamic.

Though outsiders may have difficulty distinguishing the gay and lesbian communities in the City of Angels from the remainder of the sprawling metropolis, homosexuals there nonetheless have left their mark on local politics. West Hollywood stands out as perhaps the best example, with gays and lesbians playing a pivotal role in the city's 1985 incorporation. But gay political involvement hasn't stopped at the borders of West Hollywood. It also includes such neighborhoods as the foothills community of Silverlake, whose sizable homosexual population has made its voice heard loud and clear in local elections.

Kenney's book also notes the significant role played by Los Angeles gays in statewide watershed events such as the protests that followed former Governor Pete Wilson's veto of a 1991 gay rights measure.

Quotables.....

"If there's a standard that I can't invest in something that I have general public knowledge of, then I wouldn't have any stocks at all."

— Steve Maviglio, spokesman for Governor Gray Davis, explaining why he saw no conflict of interest in purchasing Calpine Energy Corp. stock at the same time he was singing the company's praises on behalf of the governor.

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Flashback:

Call it a cover curse?

Back in November 1987, *California Journal* named the "seven-ups" — rising politicians we were dead certain would make an impact on statewide politics. How did they do? More to the point, how did *we* do in selecting them?

Uh, not well.

• Phil Isenberg, a former Sacramento mayor, was in the Assembly at the time. Term limits ended that career in 1998. He's now a lobbyist.

• Mel Levine, a Los Angeles Democrat, was a member of Congress. He ran for the U.S. Senate in 1992, finishing a dismal third in the Democratic primary — some 600,000 votes behind Barbara Boxer. He currently is an attorney in Los Angeles.

• Dan Lungren, a Republican congressman, served two terms as state attorney general before being hit by a train called Gray Davis in the 1998 contest for governor.

• Maureen O'Connor, the then-mayor of San Diego, was touted as a potential gubernatorial candidate by no less than Willie Brown Jr. She served two terms as mayor, then disappeared from the political stage.

• Mike Woo, a L.A. councilman, ran unsuccessfully for mayor in 1993, losing to Richard Riordan. After serving as a regional official in the Clinton administration, he tried to recapture his old city council seat in 2001 but lost to Eric Garcetti.

• Zev Yaroslavsky, then a L.A. councilman, made the list for the second time, having also been in named 1982. On both occasions, he was considered a sure-fire candidate for mayor. Yaroslavsky's still around, but he isn't mayor. Rather, he's an L.A. county supervisor — a great gig but somewhat short of the statewide impact we predicted for him.

• Finally, there is Gaddi Vasquez. As an Orange County supervisor, Vasquez was bright, charismatic and a Republican Latino fast-tracked for statewide office. Then came the mid-1990s Orange County bankruptcy scandal that smashed, among other things, Vasquez's political career. He resigned as a supervisor in 1995 and became — briefly — a street corner before going to work for Southern California Edison as director of public affairs.

He resurfaced last month when President George W. Bush pumped some air into Vasquez's balloon by nominating him as director of the Peace Corps.

Compiled by CJ Editors

By the numbers

Shunning the polls

19%: Percentage of registered California voters who opted out of voting in the 2000 election.

27%: Percentage who neglected to vote due to work or school scheduling conflicts or because they were too busy.

15%: Percentage of nonvoters who were sick on election day or whose disability prevented access to the polls.

13%: Percentage who said their vote wouldn't make a difference.

9%: Percentage who were out of town on voting day.

8%: Percentage who shunned the polls because they didn't like the candidates or campaign issues.

8%: Percentage kept away from polls due to voter registration problems.

6%: Percentage who forgot to vote.

Source: Based on estimates extrapolated from the Census Population Survey, U.S. Bureau of Census and report of the Caltech/MIT Voting Technology Project.

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The fallout from

For a cluster of homes atop a ridge overlooking the Barona Indian reservation, the tribe's new golf course may have included an unexpected water hazard. Last summer, not long after Barona began greening the links with nearly 250,000 gallons of water a day pumped from underground, numerous wells along the nearby crest began to suck air. First one, then another, then more wells went dry.

Water has always been precious in the arid pocket of remote San Diego County, but so many wells had never before failed at the same time, says Mary Holloway, a high school teacher who has lived on the ridge for 15 years.

"You can live without a lot of things," Holloway says, "but you can't live without water."

Equally frustrating, say Holloway and some of her neighbors, has been the tribe's response to their plight. Barona tribal leaders refused to permit an outside, independent analysis of the groundwater situation, and they refused to share their water.

More and more tribes are building bigger and bigger casinos, leaving non-tribal neighbors and local communities fearful of the cost to their quality of life. At the same time, the casinos have brought jobs and prosperity to Indian and non-Indian alike. The tribes, meanwhile, wonder why those same communities ignored the impact of local development on tribal life in pre-casino years.

By James P. Sweeney

"We've gone to countless meetings, on the reservation, to Lakeside planning, you name it," Holloway says. "We meet with the Baronas, but what they say is, 'We do what we do because we can, and that's it.'

"They are a sovereign nation, there is nothing we can do to stop them ... I just feel totally helpless."

From San Diego to the wine country, from the North Coast to a tiny community in the shadow of Yosemite, locals and local governments are feeling a bit helpless as an Indian gambling boom bulldozes its way across California. Tribal-state gambling compacts hastily negotiated by Governor Gray Davis nearly two years ago gave cities and counties little power to force tribes to address off-reservation impacts of their huge new gambling and destination resorts.

Intentional or not, that decision was compounded by a one-year

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Indian gaming

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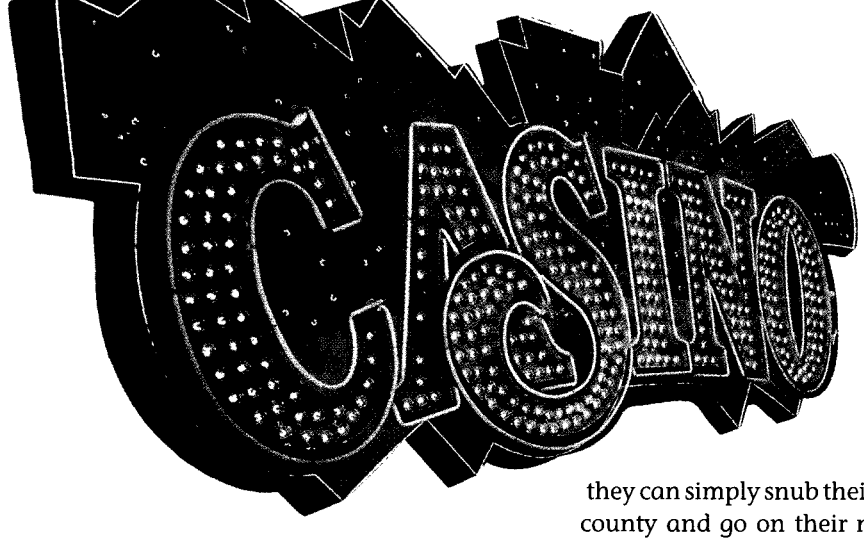

"We have no leverage as
and, if the tribes wis
they can simply snub the
and go o
— San Diego County Supervis

deadline to place new slot machines in operation. The deadline has since been suspended, but that did little to avert the fallout from a casino construction frenzy already under way.

In San Diego County, where most of the new casinos and major expansions are being built, local officials estimate it will cost $500 million for street and highway improvements needed to accommodate the crush of casino traffic. After months of often contentious meetings, three north county tribes agreed to put up $15 million for road work. But county officials say tribes largely have refused to acknowledge, much less mitigate, the range of other off-reservation impacts.

"We have no leverage as a local government and, if the tribes wish, they can simply snub their nose at the county and go on their merry way," says San Diego County Supervisor Dianne Jacob. Every environmental document that tribes submitted for the most recent wave of projects "has been deficient," says Jacob, a longtime friend of three tribes — Barona, Sycuan and Viejas — that opened the first casinos in her rural, east-county district nearly a decade ago.

Impact, but no leverage

As a result, county planners say they cannot begin to gauge the considerable weight of other impacts, such as air quality, groundwater, growth inducement, noise, biological resources and community character.

In some areas, the Indians' success has affected law enforcement. One sheriff's station near the Viejas and Sycuan reservations now attributes 40 percent of its calls to the tribes' two casinos, Jacob says.

But many tribal leaders still remember the days not so long ago when local governments had little interest in Indian concerns about growth and development.

"We've seen some major increases in traffic," says Allen Lawson, chairman of the San Pasqual band, which just opened a new casino. "My father said when he was a little boy no traffic came down the road. So where do we fall within how much is too much?"

Bill Mesa, an outspoken member of the Jamul tribal executive council, says no one consulted with his small band before surrounding its tiny, six-acre reservation with a nature preserve or approving a large shopping center not far down the road. Jamul has alarmed some of its neighbors with plans to erect a $100 million high-rise hotel and casino on its remote San Diego County reservation. The tribe also is trying to annex and place into federal trust status an adjacent 101 acres needed for the project.

"You built a huge shopping center five miles down the road from us," Mesa says. "If you're talking about trip counts and traffic problems, it's bigger than any casino. But you don't go after them like you do the Indian casinos."

The clash of cultures easily could have been anticipated. Californians have long supported and lived under some of the most stringent environmental laws in the world. The state's tribes live for the most part on remote reservations where they were driven or relocated years ago. To engage in gaming, they are restricted to federal trust land, which often is defined by their

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cal government

ose at the county
eir merry way."
ianne Jacob

On the road to Cache Creek Casino in Yolo County. Photo by Tom Meyers Photography

reservation boundaries.

"There is no way those types of uses could have been built in the back country" under normal circumstances, says Chanta Saipe, San Diego County's tribal liaison. "It's bringing employment centers to areas that are not meant for intensive development and don't have the infrastructure.

"It's a radical change in those communities. I'm not saying that it's necessarily bad, but it's definitely radical. It's not something that we would have included in our general plan. But, the fact is, that's where the reservations are. They were not given ocean-view lots."

A statewide trend

Smaller versions of the San Diego experience are playing out in scattered locations all over the state. In Santa Barbara County, the Board of Supervisors has been in a frosty standoff with the Santa Ynez Band of Chumash Indians, which is expanding its casino amid the rural splendor of the Santa Ynez Valley. A five-story parking structure the tribe is building would be far and away the largest structure in the valley, critics say. And locals fear the 1,100 cars it will hold will clog the narrow, two-lane road that serves the area.

In Sonoma County, the Dry Creek Pomos jarred tony Alexander Valley with plans for a $35 million casino on a 75-acre reservation. Just as the fight intensified, initial work on the project was halted after a power struggle erupted within the tribe.

In the Mother Lode, the Tuolumne Band of Me-Wuks graded their site and built a 125,000-square-foot casino as some local officials wrung their hands over their inability to exert any influence over the project.

"They blasted and graded and devastated a whole hill," lamented Tuolumne County Supervisor Laurie Sylwester. "We sat down with them, offered to help, anything they wanted, and they chose to ignore it."

In fairness, the environmental angst has been soothed in many areas by the prosperity Indian casinos have delivered. In more than a few rural corners of California, they have become the single largest employer. Statewide, Indian gambling has generated thousands of jobs. Moreover, tribes donate millions of dollars to local causes and offer not only gambling, but a wide range of top-flight entertainment previously unavailable in California's outback.

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Top left, a gambler tries her luck at Jackson Rancheria Casino. Top right, Cache Creek Casino owned by the Rumsey tribe. Right, playing the video machines at Jackson Rancheria.

dian gambling, none comes close to California, which has nearly a fifth, or 108 of the nation's 561 federally recognized tribes. Proposition 1A, an initiative overwhelmingly approved on the March 2000 ballot, and the gambling compacts, negotiated by tribes and Governor Davis, legalized 40 existing casinos that had operated under a legal cloud for much of the 1990s. Another 22 tribes signed compacts with hopes of tapping into the gambling bonanza.

Seven new casinos have opened in the past year. Five of those were in San Diego County, which already had three of the state's largest and most successful Indian casinos. At least nine other tribes have proposed casinos, while eight others with compacts have announced no immediate plans, according to the new California Gambling Control Commission.

An earlier, controversial gaming compact painstakingly pieced together over 17 months by former Republican Governor Pete Wilson required tribes to negotiate with counties and "mitigate any significant effect on the environment outside the ... reservation." It specifically cited traffic and law enforcement impacts.

After most of California's gaming tribes rejected the so-called Pala Compact, Democrat Davis negotiated a far more lenient agreement in just 16 days at the end of the 1999 legislative session. The Davis compact contains nebulous environmental language that requires tribes merely to "make a good-faith effort to incorporate the policies and purposes" of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act to the extent that is "consistent with the tribe's governmental interests."

Attorney General Bill Lockyer initially attempted to hold tribes to at least a basic level of compliance with CEQA but backed off when tribal attorneys steadfastly objected and the governor declined to intervene.

"The governor's the client," Lockyer said at the time. "He makes the final decision on enforcement

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from Northern California, recently attempted to re-establish itself in Oxnard, where it wanted to build a casino. The process to re-establish federal recognition or to have land taken into trust — the critical status required to conduct gambling — has been tedious and time-consuming, often taking years. But new rules approved in the waning days of the Clinton administration would streamline those procedures. The Bush administration has suspended those revisions pending a review by Interior Secretary Gale Norton.

Restless tribes have been refusing to wait. Increasingly, they are taking requests directly to friendly members of Congress. In perhaps the most notable example, U.S. Representative George Miller (D-Martinez) slipped in an amendment that allows the Lytton Band of Pomo Indians, a landless Santa Rosa tribe, to acquire and convert a struggling San Pablo cardroom into a bustling Indian casino. The San Pablo site is within the urban San Francisco Bay Area and just a few blocks off Interstate 80, historically a direct route to Nevada casinos in Lake Tahoe, Reno and points beyond.

U.S. Senator Harry Reid, a powerful Nevada Democrat, countered recently with an amendment that would repeal the Miller language and Lytton's permission to set up in San Pablo.

Back in Sacramento, the Davis administration raised hopes in some quarters in July when it issued a pointed critique of the Jamul tribe's application to add 101 acres to its federal trust land. But a Jamul spokesman notes that most of the objections could have been leveled against many of the other Indian casinos in the state.

"There is a lot of pressure to keep Indian gaming from expanding, that's where that is coming from," Mesa says. "When we signed our compact, they didn't say, 'You're a small reservation so you shouldn't have a big casino.'"

Meanwhile, the Barona tribe recently announced what may be the largest casino expansion in California's Indian country, a $225 million project that will include a 400-room hotel. The tribe contends it is on a separate underground aquifer that has ample water.

"Our first responsibility is to our tribal consistuency, our residents that live here," says David Baron, the tribe's director of government affairs. "If we were to do something to affect our water supply, we wouldn't have a reservation."

Even more frightening to some is what could happen when federal officials begin acting on more than 50 applications for federal recognition from other, often landless, California tribes.

policy."

With that, county officials say they were left largely to fend for themselves.

"How do you make good government work, or smart planning, if you allow these types of projects that are beyond the control of local governments?" asks Cheryl Schmit of Standup for California, a grass-roots lobby that helped shape the environmental safeguards in the compact negotiated by Wilson.

Expans or fears

Even more frightening to some is what could happen when federal officials begin acting on more than 50 applications for federal recognition from other, often landless, California tribes.

Under federal law, if those tribes are restored to full status by the Bureau of Indian Affairs, they are entitled to a land base. One such tribe,

Mary Holloway voted to legalize Indian gambling, a vote she now regrets. Holloway concedes there is no way she can be certain that the Barona expansion caused her water problems. She and her husband spent $20,000 to drill a new well. It's 1,180-feet deep, more than twice the depth of their old 500-foot well.

"What upsets me more than anything," Holloway says, "is that if I had any problem with any other neighbor, I would have some way to negotiate, some way to talk to them, some way to see if what they were doing was interfering with my life. With the Indians, we have no way. We have meetings, but they are meaningless."

James P. Sweeney, Sacramento bureau chief for Copley News Service, *has covered Indian gambling in California for more than five years. Comments on this story may be sent to* **edit@statenet.com**.

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Gambling's highs and

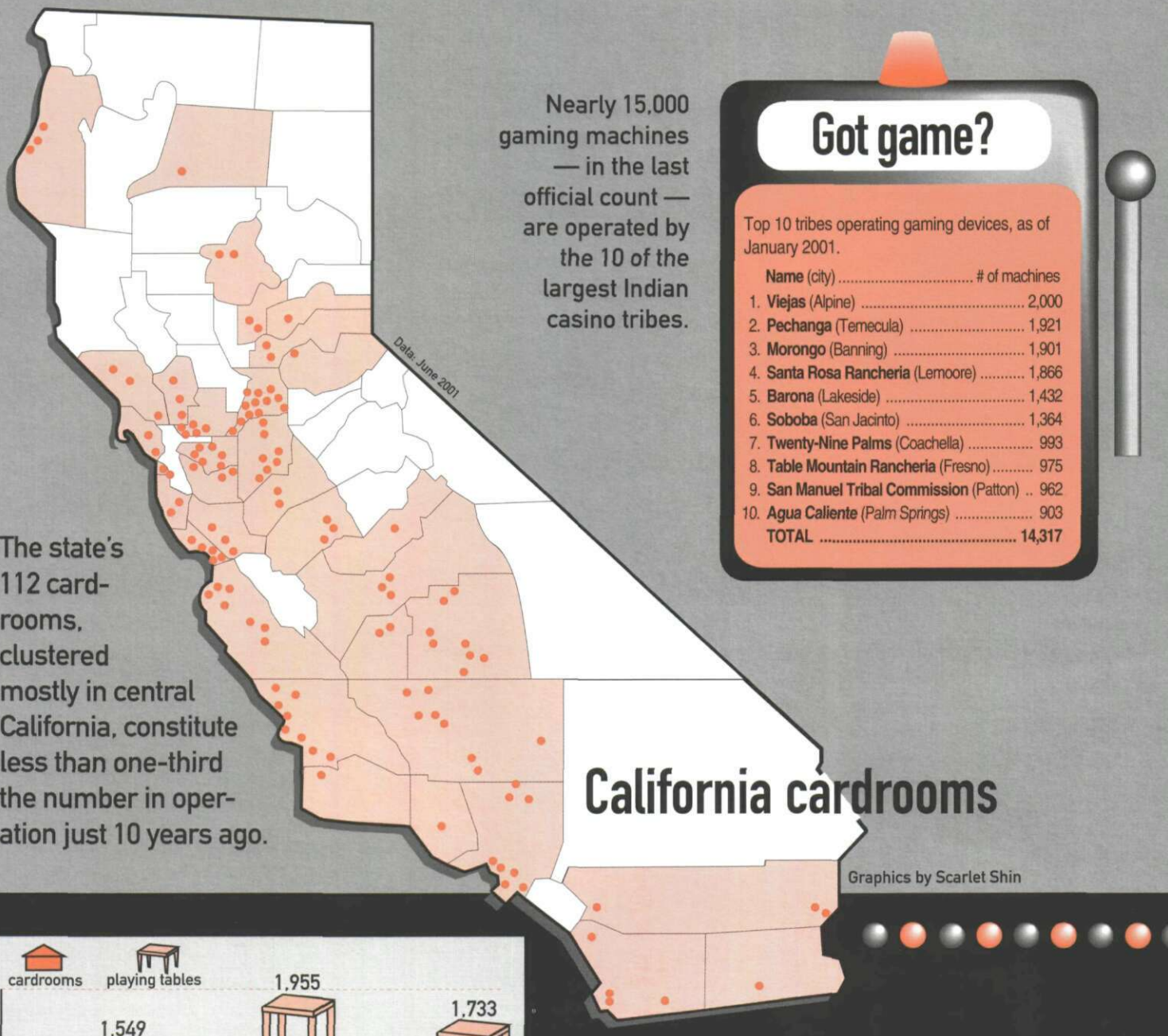
For years, horse racing and cardrooms monopolized California's gambling industry. But with the rapid expansion of Indian casinos, slot machines are quickly dominating.

Nearly 15,000 gaming machines — in the last official count — are operated by the 10 of the largest Indian casino tribes.

Got game?

Top 10 tribes operating gaming devices, as of January 2001.

	Name (city)	# of machines
1.	**Viejas** (Alpine)	2,000
2.	**Pechanga** (Temecula)	1,921
3.	**Morongo** (Banning)	1,901
4.	**Santa Rosa Rancheria** (Lemoore)	1,866
5.	**Barona** (Lakeside)	1,432
6.	**Soboba** (San Jacinto)	1,364
7.	**Twenty-Nine Palms** (Coachella)	993
8.	**Table Mountain Rancheria** (Fresno)	975
9.	**San Manuel Tribal Commission** (Patton)	962
10.	**Agua Caliente** (Palm Springs)	903
	TOTAL	**14,317**



The state's 112 cardrooms, clustered mostly in central California, constitute less than one-third the number in operation just 10 years ago.

California cardrooms

Graphics by Scarlet Shin

Changes in California's card club industry

The number of cardrooms has diminished dramatically since 1989, while the number of playing tables has ballooned. The net effect: fewer but larger and more financially potent cardrooms.

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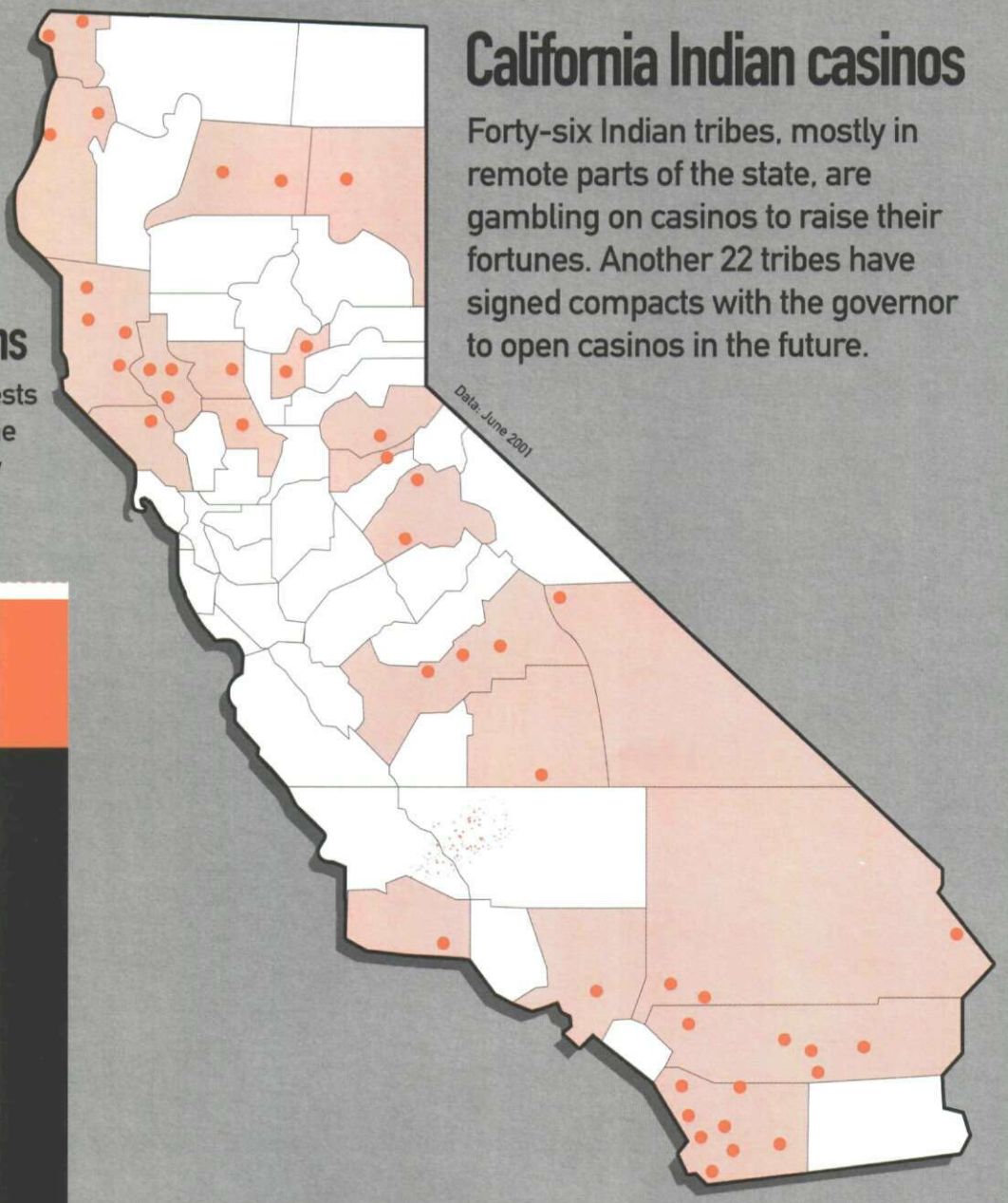
California Indian casinos

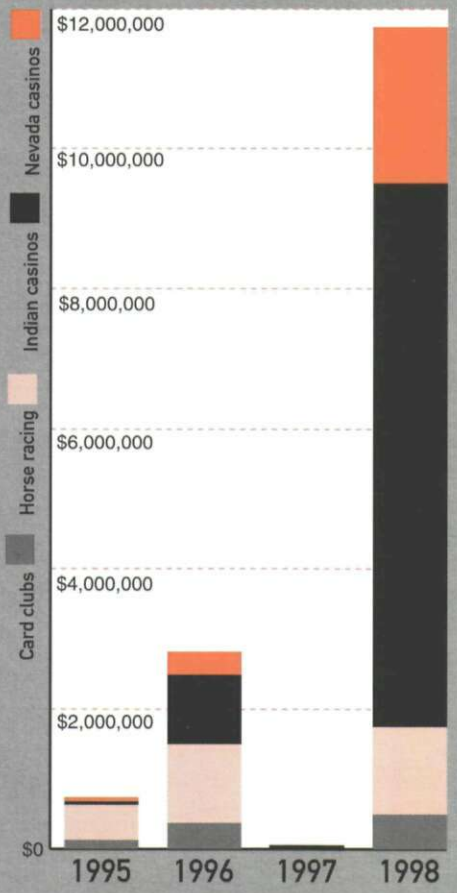
Forty-six Indian tribes, mostly in remote parts of the state, are gambling on casinos to raise their fortunes. Another 22 tribes have signed compacts with the governor to open casinos in the future.

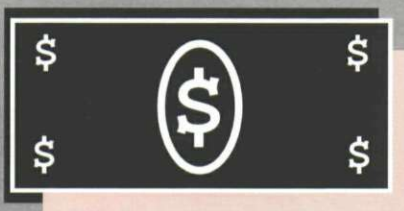


Data, June 2001

Gambling contributions

In recent years, casino interests have vastly overshadowed the rest of the gambling industry with prolific campaign spending in California.





California Indian tribes topped gambling's list of key players in the political arena with their bountiful campaign giving, particularly in the 1998 election.

Sources: California Attorney General's Office, California Common Cause, California Horse Racing Board, 2001.

Top 10 gambling contributors, 1995–98

1.	Morongo Band of Mission Indians	$1,705,331
2.	Agua Caliente Band of Cahuilla Indians	1,626,269
3.	San Manuel Band of Mission Indians	1,346,109
4.	California Commerce Club	938,004
5.	Hotel Employees & Restaurant Employees Intl. Union	879,871
6.	Quarter Horse Racing	786,773
7.	Viejas Band of Kumeyaay Indians	596,166
8.	Barona Band of Mission Indians	591,464
9.	California Indian Nation PAC	580,889
10.	Hilton Hotels Corporation	523,350

Horse racing

	Total wagers	Attendance
1997	$3.6 billion	10.9 million
1998	$3.7 billion	10.7 million
2000	$2.4 billion	9.9 million

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It was out of business in 1995 for the Bell Jackpot card club.
Photos for this article by Noel Brinkerhoff

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A stacked deck?

As tribal gambling expands, California's traditional card clubs struggle to survive. Now, with tribes said to be on track to open casinos in the heart of Los Angeles, it could deal a death blow to cardrooms. In an effort to stop the tribes, clubs have enlisted help from an unlikely source: Los Angeles County's poorest cities, those who depend on card club revenues.

By Noel Brinkerhoff

These days, a person can stroll into the Bicycle Club, a card club in Los Angeles County, and play a game called "No Bust Blackjack." The card game is similar to traditional blackjack in that a player wins by getting as close as he or she can to the number 21 without going over, or busting. Except that in "No Bust Blackjack," players may win back their bets even if they exceed 21 — a twist of the rules that allows them to stick around for at least another hand.

"Sticking around" is something the owners of California's card clubs are trying to do as they square off against Native American tribes in a high-stakes game of political poker. In the eyes of club operators, they've been dealt a weak hand by the state and stand little chance against the four aces held by the tribes who run reservation casinos.

Tribal casinos — backed by the full power of voter-approved ballot initiatives – may offer Nevada-style gambling with slot machines and real blackjack, while card clubs are limited by law to various renditions of poker and knock-offs such as "No Bust." Under California law, the card club — the "house" — cannot be a participant in any games and cannot serve as banker for the games. As a result, slot machines are illegal and clubs cannot offer huge jackpots. Consequently, card clubs are losing customers, owners say,

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forcing more and more of their colleagues to fold and go out of business.

In an effort to keep from going bust as an industry, card clubs are looking for help from state government and from the courts. And in this quest, they've been aided by an unlikely but important set of local government allies. For

The Bicycle Club in Bell Gardens, right. Entrance to Hawaiian Gardens Casino in Hawaiian Gardens, below.

a number of small cities, particularly in the Los Angeles area, cardrooms are the economic backbone, providing as much as 60 percent of the tax dollars to pay for, among other services, police and fire protection. In addition, the clubs contribute to the local economy by providing jobs, and often sponsor youth programs and charity events. The fate of these card clubs most affects the Hispanic poor, who comprise most of the residents in cities such as Bell Gardens, Hawaiian Gardens and Commerce.

Card-club officials insist that the same reasoning used by Native American leaders during their statewide initiative campaigns — that expanded gaming would provide for the long-neglected needs of their people — can and should be applied to the card clubs. "The theme that was behind Proposition 5 [November 1998] and Proposition 1A [March 2000], and the reason most people voted for them, was that this was a means to finance essential services for the Indian tribes," says Andy Schneiderman, vice president and general counsel for the California Commerce Club in Los Angeles County. "Well, the card clubs in essence provide the same kind of service and means to the fairly impoverished, largely minority cities that house the card clubs."

But that reasoning thus far has fallen on deaf ears in Sacramento, where Governor Gray Davis has balked at expanded gaming for card clubs. Instead, owners are focusing elsewhere for help. And because the clubs mean so much locally, city leaders in south Los Angeles County are banding together to help preserve a crucial source of revenue. The real danger does not come from existing casinos in, say, San Diego and San Bernardino counties. The real danger, say card club owners, comes from the potential encroachment of tribal casinos into metropolitan Los Angeles.

The effort to stop that encroachment mirrors an effort already under way in the San Francisco Bay Area, where a landless tribe's effort to open a Nevada-style casino has resulted in a lawsuit by local card clubs. The legal maneuver, if successful, could not only stop the casino but also could allow clubs to expand their gambling operations, affording them a chance to bypass the Legislature.

Too rich for me

Card clubs have been operating in California since the 1800s, and those in business today range from the two-table Klondike Casino in Eureka to the 200-table California Commerce Club in Los Angeles. Most, however, resemble the Klondike in size, averaging only four tables per establishment. In fact, of the 112 clubs left in the state, only eight operate 50 or more tables. Large or small, however, they are going out of business at an alarming rate. For instance, nearly 300 clubs — 75 percent of those operating in 1990 — have gone out of business in the last decade.

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"The card clubs are really struggling," says Valerie Brown, a former state assemblywoman now working for a coalition of Los Angeles County local governments trying to keep card clubs afloat.

One of those clubs, the Bicycle Club, has seen its business drop 25 percent from three years ago, according to the club's chief operating officer, Hashem Minaiy. That was when California adopted Proposition 5, which legalized Nevada-style gaming for Indian tribes. With more people driving out of town to gamble at tribal casinos, Minaiy says his club has been forced to downsize its operation from 200 tables to 135 because it no longer can afford the $5,000 per-table licensing fee it must pay to the state.

Other major clubs have experienced similar drops in business, causing some to embark upon risky ventures to compete with tribal casinos. The California Commerce Club, for instance, is trying to bring a touch of Las Vegas — or at least its ostentatious facade — to Los Angeles County's industrial east side. It has invested over $40 million in a nine-story, 200-room hotel which, once completed, will resemble "a Babylonian temple with an oversize grand entry arch, lush gardens and numerous water fountains," according to the club's Web site.

The hotel, originally scheduled to open in 2000, has been plagued by construction delays and cost overruns. Some industry officials privately question whether the new hotel will bring in the necessary tourists and gamblers for Commerce to pay off its construction loan. Like many card clubs in Los Angeles, Commerce sits in a low-income area filled with warehouses "where people aren't going to want to stay two or three days [in a hotel]," says one card club lobbyist.

The California Commerce card club hopes to add a touch of Las Vegas with this 200-room hotel, due to open this month.

But club executives insist they had little choice but to roll the dice on the hotel. "The amenities that people have grown to expect when they travel to Las Vegas, when they travel to Indian reservations, are very high," says Schneiderman. "In order to compete in this industry, your facility and your service has to be outstanding. If you try to do it the same old way, without increasing the amenities you offer to your customers, you'll probably fade away."

Local impact

If the hotel investment doesn't pay off and things go south for the club, the impact could be severe for the local community, says Hugo Argumedo, mayor of the City of Commerce. "In our city, 38 to 39 percent of our annual operating revenue comes from [the card club]. So we're very dependent on it for fire protection, for police services, for a lot of the various programs and services that we offer to the residents in our community."

Among those programs, Argumedo points out, is the city's charitable Christmas party, which the card club helps sponsor each year. The city hosts 100 low-income families — "families that otherwise wouldn't get to enjoy Christmas," says the mayor — to a Christmas dinner, including entertainment and gifts from Santa Claus. Most chosen to attend the event are poor and Hispanic, owing to the fact that Commerce's population of 13,000 is more than 90 percent Hispanic and mostly low-income.

The story is the same in other struggling communities in Los Angeles County that rely heavily on card club taxes and jobs. In the city of Bell Gardens (population 44,000, 93

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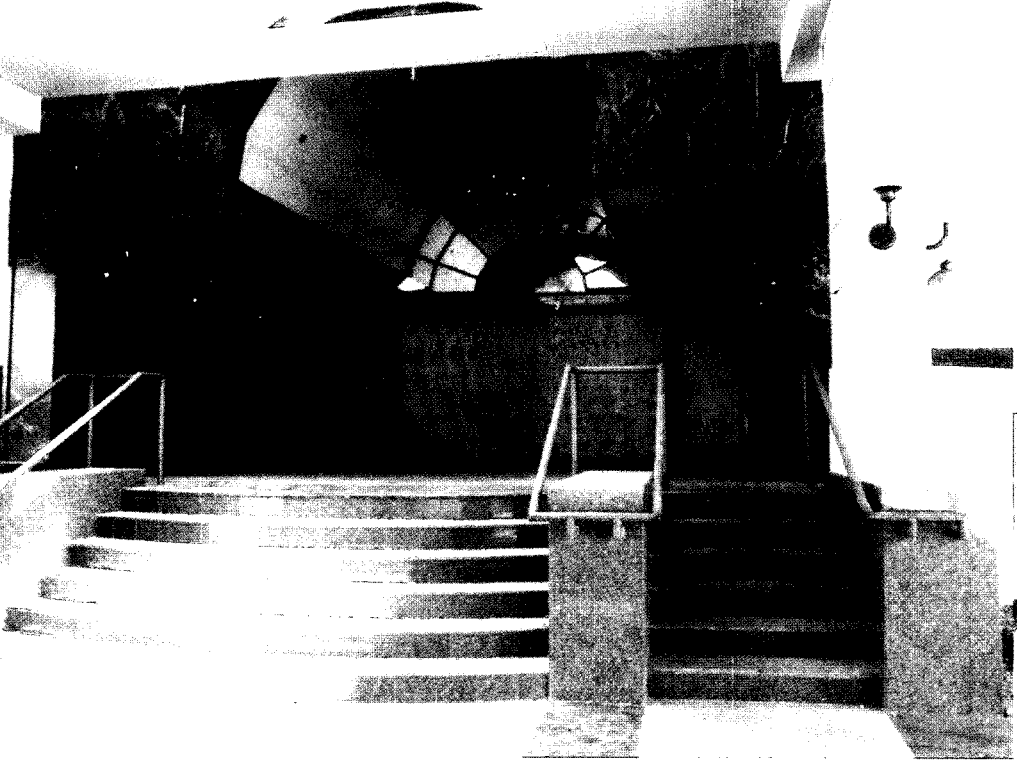

The boarded-up Bell Jackpot Casino, a sign of the times for card clubs.

percent Hispanic), the Bicycle Club is responsible for producing 50 percent of the city's $16 million budget, according to city Communications Director Philip Wagner.

And then there's the tiny town of Hawaiian Gardens, which ranks near the bottom of the economic scale among Los Angeles County cities. Its population of 15,000 (75 percent Hispanic) is squeezed onto nine-tenths of a square mile, and the local card club, Hawaiian Gardens, produces $5 million of the city's $8 million budget. "Let's put it this way, without the card club, life would be very tough," says Mike Blazenski, the city's finance director. "The casino was basically put in to try and allow for programs to take place and to take care of the residents because of the fact that there were no other real sources of revenue."

With the financial well-being of their communities tied to the card clubs' survival, city leaders from Commerce, Bell Gardens, Hawaiian Gardens and Gardena banded together this summer and formed a joint powers authority called California Cities for Self-Reliance. Brian Wilson, Commerce's public information officer, says it made sense for the four communities to work together. "The cities feel, in regards to the Indian casinos, a little overwhelmed because [the casinos] are so large, their lobbying so great," he said.

One of the first things the group did was hire ex-Assemblywoman Brown, a Sonoma Democrat, as executive director because of her prior experience as chairwoman of the Assembly Governmental Organization Committee, which oversees gambling issues. The group hopes to raise awareness among state and federal officials of the importance card clubs play for local towns and to build a coalition with other city and county officials, including the powerful Los Angeles County Board of Supervisors, to keep Native American tribes from bringing slots into metropolitan Los Angeles. Already, Brown says, there are rumors that some tribes are looking for land in the county for new casinos, which could finish off the card clubs.

Some card club owner
much clou

Beneath the palm trees, Hawaii Gardens Casino waits for customers.

During the campaigns for Propositions 5 and 1A, tribal leaders insisted that the measures would not result in off-reservation casinos popping up in big cities. But such an expansion of gambling has become a possibility after a landless Sonoma County tribe purchased a card club in the heart of the San Francisco Bay Area. The Lytton Band of Pomo Indians hopes to turn Ladbroke's Casino San Pablo in Contra Costa County into a full-blown Nevada-style operation, complete with slot machines.

In the courts

Next month, attorneys for four Northern California cardrooms, including three in the Bay Area, will argue in federal district court in Sacramento that the Lytton casino plan should be halted, insisting it flies in the face of Proposition 1A's intent to allow tribal operations only on reservations. The lawsuit, however, serves an additional purpose for the card clubs — to try to gain the same gaming opportunities that the tribes now enjoy.

"There is a very serious legal question as to whether one part of society should be allowed to do something that another part is legally barred from doing," argues Bo Links, one of the card club attorneys. "What the tribes are allowed to do under Prop. 1A, my client gets thrown in jail for doing. There's something wrong with that."

The tribe's attorney, Tony Cohen, agrees that the lawsuit appears to be less about his client's casino plan and more about getting the courts to give card clubs the same gaming opportunities as the tribes. That, Cohen contends, is not likely to happen because a federal court in Arizona

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recently rejected a similar case brought by the owners of local race tracks, who used many of the same legal arguments as the California card clubs.

If Cohen is correct and the clubs lose their lawsuit, their only other option would be to turn to state government for help in expanding their gambling operations — a tactic that seems unlikely to succeed. Three years ago, when tribal representatives were working out the provisions of Proposition 1A with Governor Gray Davis, card-club lobbyists pleaded with Davis to allow their clients to install slot machines. But Davis refused. He also vetoed legislation last year that would have allowed the clubs to play traditional blackjack. And the governor isn't likely to change his mind anytime soon, according to spokeswoman Hilary McLean. "I don't think you're going to see a big expansion of card-club gaming during the Davis administration," she said.

Some in the card-club industry concede that they are unlikely to be authorized for slots and other games because the tribes have too much clout in Sacramento. And by clout, they mean cash. Jim Knox, president of California Common Cause, which monitors contributions from special interest groups, agrees.

"Clearly, the tribes have the upper hand now, by virtue of the fact that they contribute roughly eight to 10 times more than the card clubs do," says Knox. Davis alone received $708,000 from tribal interests between1995 and 1998, while one card club — California Commerce — gave him $11,000. As is their custom, Davis officials deny any link between tribal contributions and the governor's refusal to help the clubs.

The clubs also have had difficulty securing approval for less-controversial proposals. One bill sponsored this year would have allowed cardrooms to sell stock and become publicly traded companies, which is forbidden under current law. Haig Kelegian, president of the Golden State Gaming Association, which represents 80 percent of the card club industry, says going public could ease the debts of businesses like the Bicycle Club, of which Kelegian is part owner. But the bill, AB 572, was vigorously opposed by gaming tribes. "They [the casino tribes] have the unmitigated gall to say tax-paying businesses in California like our card clubs can't have the ability to be financed publicly. How ridiculous can they get?" said Kelegian.

But Susan Jensen, spokeswoman for the California Nations Indian Gaming Association, which represents 41 tribal casinos, said her organization opposed AB 572 because it could lead to an expansion of gaming in California by allowing publicly traded corporations, such as those in Nevada, to run card clubs. Jensen said the growth of tribal gaming doesn't really represent "expansion" but is "just the tribes finally getting what they have been deserving since 1988" when the federal government approved the right of Native Americans to have gambling operations. "It just took us awhile to get our compacts," she added.

Although Los Angeles club owners publicly say their top priority is getting slots and blackjack, privately they just hope to survive on what they now offer to customers. And to ensure that survival, they plan to focus their energies on keeping tribes like the Lytton Band out of cities, according to one card club lobbyist.

"That's their real No.1 goal," says the lobbyist. "That's their most realistic goal."

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Sacramento. "Tribes have the upper hand now
[because] they contribute roughly eight to 10 times
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— Jim Knox, Common Cause

Noel Brinkerhoff is associate editor of California Journal. *Comments on this story may be sent to* **edit@statenet.com.**

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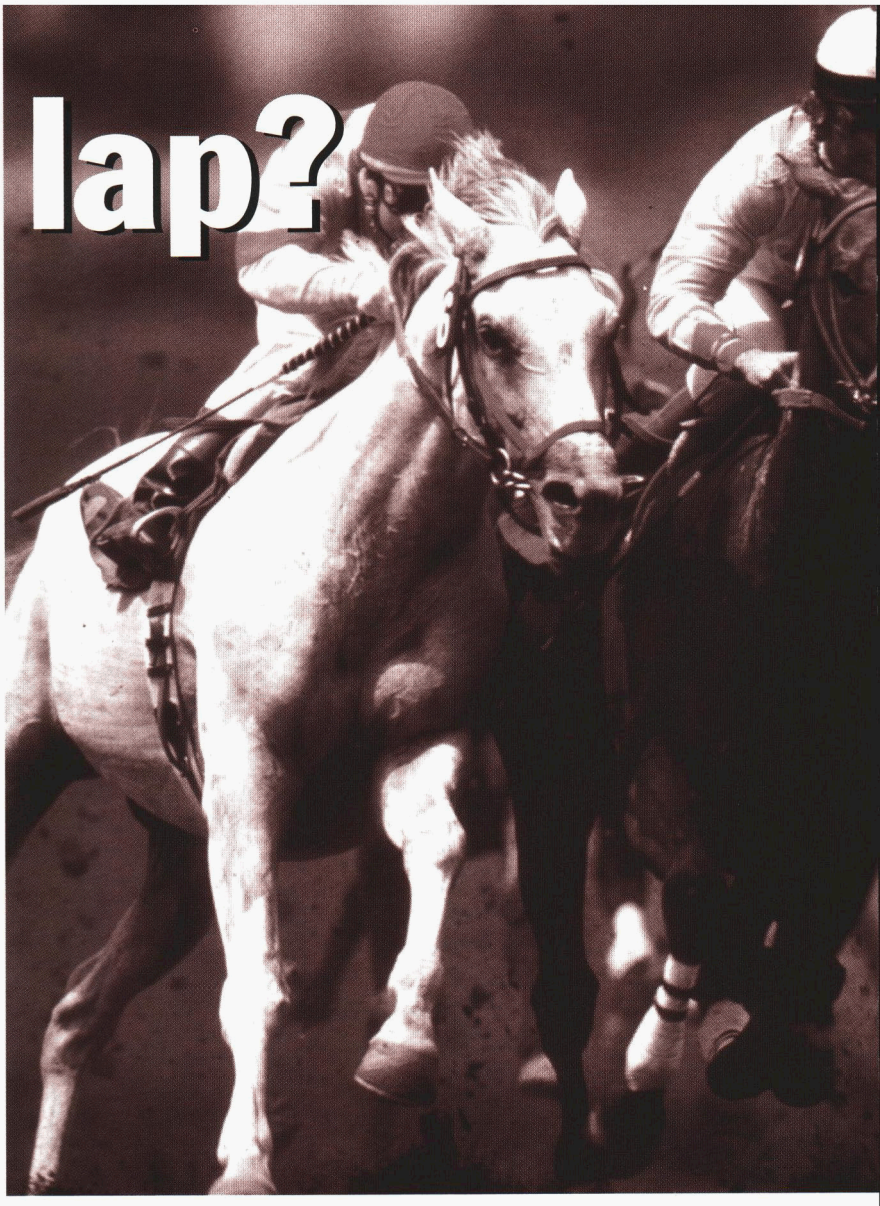
The last lap?



Hobbled by competition from cardrooms, casinos and the Internet, California's horse-racing industry is limping down the stretch. With a governor opposed to expanded gambling and younger bettors looking elsewhere, what will it take to keep horse racing in the running?

By Claudia Buck

In its glory days, back in the 1940s and '50s, California's race tracks were the envy of horse-racing enthusiasts nationwide. The grandstands were full, the betting fast and furious, the prize money generous and the balmy weather conducive to holding race meets virtually year-round.

Today, horse racing in California isn't trotting along at quite so brisk a gait. Attendance is flagging, trainers are shipping their horse to other states that offer fatter purses, and younger gamblers are turning to other venues for their gambling thrills.

"Hard times have hit horse racing in the state," said state Senator Don Perata (D-Oakland), whose district encompasses two tracks, Bay Meadows and Golden Gate Fields. "While there are a lot of factors involved, state government must do what it can to return the industry to competitiveness. Unlike many businesses that can no longer survive in this state, racing can," said Perata, who chairs the Senate Governmental Organization Committee. "Things like advance deposit and satellite wagering must be made legal to allow us to do what other states do for their racing industry."

No one is contemplating putting out to pasture the 15 racetracks and county fairs that offer thoroughbred, quarter horse and harness racing in California. Of those racetracks, six are privately owned (Bay Meadows in San Mateo, Del Mar in Del Mar, Golden Gate Fields in Albany, Hollywood Park in Inglewood, Los Alamitos in Cypress and Santa Anita in Arcadia) and nine are associated with county fairs, including the California State Fair. Statewide, horse racing employs some 52,500 workers – including breeders, trainers, jockeys, veterinarians, feed suppliers and betting clerks – and adds anywhere from $800 million to $4 billion annually to the state's economy, depending on the study.

The bad news is that attendance has steadily declined. In 1990, attendance at California tracks was 13.7 million; by 2000, it had dipped to 9.9 million. The better news is that the wagering handle, the amount bet statewide, has remained somewhat steady, helped largely by 19 satellite wagering centers scattered throughout the state that allow Californians to place their bets without actually showing up at a racetrack window. In 1990, the total amount wagered on California horse racing was $2.8 billion; in 2000, the total wager was $2.4 billion – more

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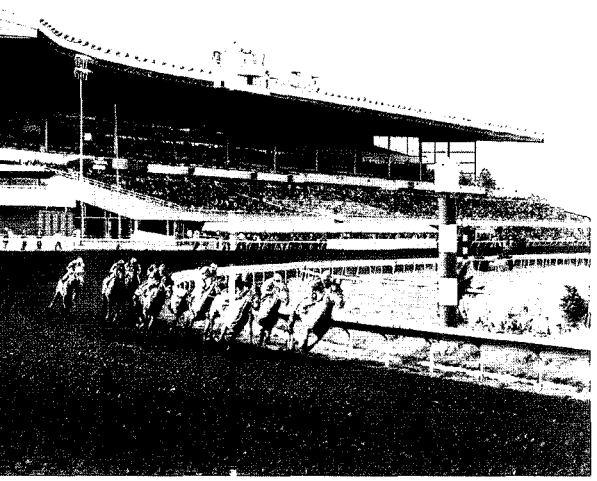
than half of which was placed at off-track betting sites.

"If it weren't for satellite wagering, horse racing would be in serious trouble. That's what has kept this industry afloat," said one knowledgeable Capitol source.

But other states that permit slot machines at racetracks offer more attractive prize money, which has lured a number of racehorse owners away from California. Horse owners also complain that this state's worker-compensation laws make it too costly to run their horses.



Heading toward the finish at Golden Gate Fields. Photo courtesy of the California Horse Racing Board

A number of steps have been taken in recent years to bolster horse racing's fortunes. The late state Senator Ken Maddy (R-Fresno), the "walking encyclopedia of horse racing," successfully brokered about $50 million in reduced state licensing fees for horse racing in the late 1990s. This year's state budget eliminated the sales tax on racehorse breeding stock. More recently, the California Horse Racing Board proposed cutting the number of actual racing days in an effort to bolster prize monies and boost attendance.

Nevertheless, "the future of horse racing in California is tenuous because competition for a finite amount of wagering dollars is increasingly fierce," according to a recent study commissioned by the racing industry.

To capture a piece of that wagering dollar, San Francisco attorney Barry Fadem proposed a constitutional amendment in 1999 that would have allowed racetracks the same number of slot machines as California's tribal casinos. Fadem, one of the architects of California's state lottery initiative, said racetrack slot machines were necessary to stay competitive with Indian casinos. Fadem eventually pulled the ballot measure after the state's racetracks owners failed to rally behind it. Two years later, Fadem says he doesn't see "any circumstances where the time is ripe for another initiative."

Not only were some racetrack owners reluctant to fork over the huge amounts of money needed to push such an initiative, but a number of local officials with racetracks in their midst were not enthusiastic about the prospect of adding slot machines. Even more troubling were polls that showed potential voters didn't regard the plight of racetracks as particularly worrisome. "The idea that racetracks desperately needed a level playing field to compete against tribes never received a lot of sympathy," noted Fadem.

Most racetrack supporters are placing their bets on provisions of AB 471, which legalizes so-called "account wagering," where bettors place funds in an account that can be accessed by phone or the Internet. The bill is aimed at keeping within the state horse-racing revenues that currently are siphoned off to offshore and out-of-state gambling centers.

According to an industry study, California's racetracks and "horsemen" in 1998 and 1999 lost some $30 million in horse-racing revenues from account wagering. Under AB 471, the state's horse-racing industry would receive 8 to11 cents of every dollar bet from an account wager; smaller portion would be allocated to suppport county fairs, problem gambling programs, pension and welfare aid for racetrack backstretch employees and the equine health center at the University of California, Davis.

While noting that AB 471 is not the cure-all to horse racing's ailments, Assemblyman Herb Wesson (D-Los Angeles), one of the bill's co-authors and chair of the Assembly Governmental Organization Committee, calls it "a significant step in the right direction. As California legislators, we need to be mindful that this industry creates 50,000 jobs, and a lot of individuals pay their bills and pay their taxes based on work in this industry."

The bill passed the Senate and Assembly by near-unanimous votes and, was signed by Governor Gray Davis. Last year, Davis vetoed a similar bill, saying it violated his oft-repeated pledge to not allow any expansion of gambling in California. Opponents such as the National Coalition Against Legalized Gambling contend AB 471 will make gambling more accessible.

But the bill's supporters say it is not an expansion of gambling but designed merely to keep in California money that otherwise goes to out-of-state or offshore Internet gambling operators. "It's not an expansion of gambling, it is an investment in the economy of the state," said Perata.

The bill was re-written this year to add safeguards preventing minors from accessing account wager funds and to insert a sunset clause on its gambling provisions in 2008. (The bill also would allow racing's backstretch employees to form bargaining unions and would require an annual state inspection of backstretch housing, considered substandard at many tracks.)

"In the short run, California's tracks have been blessed with good locations, good weather and very little competition. But in the long run, tracks need some type of Internet betting. Otherwise, there will be racetrack closures in California," said I. Nelson Rose, a national gambling law expert in Whittier. Racetracks, he says, are like railroads just after the invention of automobiles. "They've seen the handwriting on the wall and are trying to adapt and survive."

Something, by the way, most railroads failed to do.

Claudia Buck is on sabbatical as California Journal's *managing editor. Comments may be sent to* **edit@statenet.com.**

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Transportation Secretary Norman Mineta

The longtime Democratic congressman and former San Jose mayor finds himself back in familiar territory — dealing with the nation's transportation woes. Less familiar is his role as the sole Democrat in a Republican White House.

By Dana Wilkie

Five days after Christmas, and three weeks before the inauguration of the country's new president, Norman Mineta was still agonizing about his decision: Could he remain true to his Democratic roots and accept George W. Bush's invitation to join a conservative administration as secretary of the nation's $58.7 billion transportation department?

Mineta needed a sounding board. He had a long talk with the president's chief-of-staff, then another with the vice president-elect. The day after New Year's, Mineta sat down with Bush, who assured the former California congressman that he would have as much access to the president — and as much say — as his GOP counterparts in the Cabinet.

"I didn't want to be diminished as a Democrat, nor did I want to be considered a turncoat," Mineta recalled. "I didn't want to just be a poster child for the Bush administration."

A few weeks after Mineta took the job as transportation secretary, he had a golden opportunity to see if Bush meant what he said: When Mineta learned that

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Illustration by Sandra Hoover

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Jack Schenendorf, Bush transportation adviser

"He's not coming at this as he might if h
As secretary of transportation, he ha
to the airline
His own personal views are going t

the president's budget cut $331 million from airport improvement programs, he rang up Bush's budget director, Mitch Daniels.

"Mitch," he said, "The president told me to keep aviation off the front page ... and I need this $331 million."

He got it.

At a time when the traveling public is frustrated by jammed highways, airline delays and the quality of mass transit, most agree that Mineta brings to the U.S. Department of Transportation a resume' that more than qualifies him for the agency's challenges. During a political career that spanned more than three decades — as a San Jose mayor, a California congressman, and as President Bill Clinton's commerce secretary — Mineta toiled on issues that were not so much partisan as they were practical: highways, bridges, railroads, airlines. Studious, diligent, even-tempered, he worked well with Democrats and Republicans and was often successful at forging agreements between political opposites.

That last skill will be important, since the 69-year-old Mineta is the lone Democrat in Bush's Republican administration — and no fair-weather Democrat, either. Widely viewed as a liberal in the 21 years he represented the Silicon Valley in Congress, he championed civil rights and was the driving force behind the government's decision to compensate Japanese-Americans interned during World War II. How he will reconcile his personal beliefs with the president's — if new highways invade environmentally sensitive areas, for instance — will be one of the central questions hanging over his tenure.

"I have enormous confidence in him," said U.S. Representative Jane Harman (D-Torrance), a fellow Democrat who was impressed when Mineta crossed the country twice in one day to help her campaign in the last election. "I think he's very versatile and he brings enormous skills [to the department]."

He quickly put those skills to use when the president's proposed 2002 budget slashed money from his department, in part to help pay for Bush's promised tax cut. But unlike some of his Cabinet counterparts, Mineta convinced the administration to restore the transportation funding. Perhaps Bush needed to make a show of good faith for the Democrat. Or perhaps Mineta demonstrated the persuasiveness for which he was known in the House of Representatives.

"Had he not elevated that issue, the delays and cancellations and gridlock that we see today would have most likely been exacerbated," said Michael Wascom, spokesman for the Air Transport Association of America, which represents major U.S. airlines.

Said Mineta: "Am I going to be able to win on every one of those? I doubt it. But at least I feel I have the ability to take the president up on his offer of saying, 'I've got an open door.'"

A diverse background

Mineta brings to the transportation department a diverse background. Besides his public-office credentials, he spent time in the U.S. Army, worked as an insurance executive and as a lobbyist for Lockheed Martin Corporation, and was chairman of the congressionally appointed National Civil Aviation Review Commission, which in 1997 recommended an overhaul of the Federal Aviation Administration.

Transportation is where Mineta made his mark in Congress. He sat many years on the House Public Works and Transportation Committee and was chairman from 1993 to 1994. While there, he built a reputation as a pragmatist, a doer rather than a talker. Though his overall voting record was undeniably progressive, "he worked with both sides very well, [and] he established an environment where even when [Democrats] were in charge, [Republicans] felt fairly treated," said U.S. Representative Bob Filner (D-San

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responsibility
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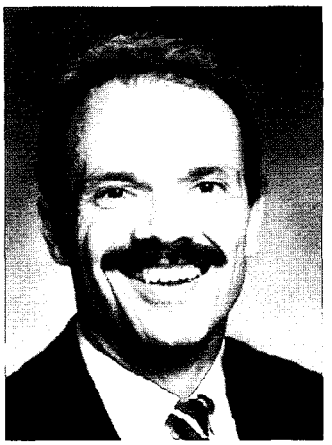
— said Jack Schenendorf



Jack Pitney, Claremont McKenna College government professor

Diego), who worked on the committee with Mineta.

"People don't join that committee to pursue ideological agendas," said Jack Pitney, a government professor at Claremont McKenna College. "They join it to pour concrete."

At a time when investment in public transit was not an especially popular stand, Mineta year after year pushed to spend more money on commuter-friendly rail lines and subways. He helped write 1997 legislation that began systematic and significant investments in public transportation.

"His involvement on the committee is really the basis of our feeling [that he'll be] an excellent secretary," said Amy Coggin, a spokeswoman for the American Public Transportation Association. "Record [mass transit] ridership probably couldn't have happened without the work of people like Norm Mineta."

Certainly, it was not just his committee credentials that won him the secretary's job. Bush promised to pick at least one Democrat for his Cabinet, and Mineta fit the bill. He is a Japanese-American who filled Bush's need to diversify the top of his administration. He had previous Cabinet experience under Clinton. And Bush knew that Mineta could get along with Republicans.

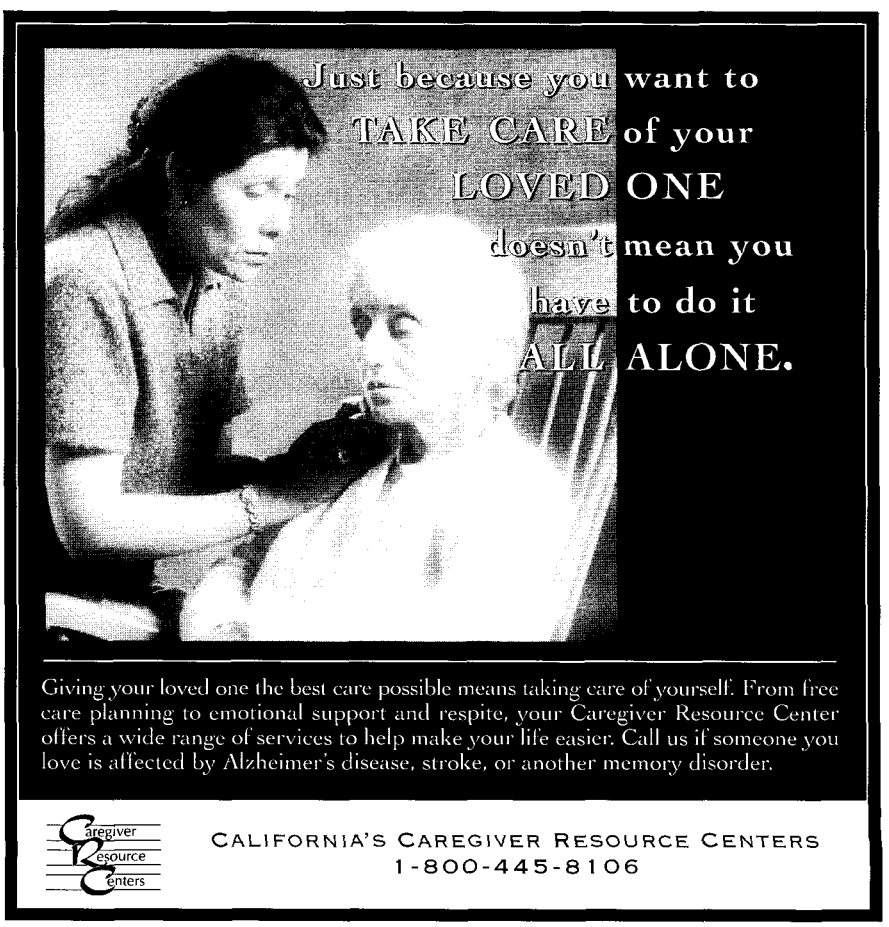
But will Republicans in the Bush administration get along with Mineta?

"I can say that in the Cabinet meetings, or one-on-one ... there's no feeling that I have a 'D' after my name," Mineta said, referring to his Democratic credentials. "I can sit around that table at the Cabinet meetings, expressing my opinion, and probably be chided more [for being] a Californian than [for being] a Democrat."

Perhaps that is because, so far, Mineta has yet to make any partisan waves. When he had an opportunity to help fellow Democrats in California — by making their case that temporary controls on wholesale electricity prices might help ease California's power shortages and rolling blackouts — the secretary instead embraced Bush's position that caps would interfere with market forces.

Though Mineta argued that he took the same stand while a congressman, U.S. Senator Dianne Feinstein (D-California) certainly seemed taken aback by it: "I'm really surprised that Secretary Mineta would take the administration's doctrinaire point of view without first talking to me about the importance of this issue," said Feinstein.

Mineta's stand left some wondering if the new secretary was motivated simply by cool careerism. But others contend that Mineta's approach to problems such as high electricity and gasoline prices will be different now that his constituency is different.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LOVED ONE
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Norm Mineta

BORN:
November 12,1931
HOME:
San Jose
EDUCATION:
University of California, Berkeley
CAREER:
U.S. Army,
intelligence officer in Japan
and Korea (1953-56)
Mineta Insurance Agency
(1956-74)
San Jose City Council (1967-71)
San Jose Mayor (1971-74)
U.S. House of Representatives
(1975-95)
Chair, Public Works and
Transportation
Committee (1992-94)
Vice president, Lockheed Martin
Corp. (1995-00)
U.S. Secretary of Commerce
(2000-01)
U.S. Secretary of Transportation
(2001-present)
KEY CONGRESSIONAL LEGISLATION:
Civil Liberties Act of 1988
(apology and redress for
treatment of Japanese
Americans interned during
World War II)

Intermodal Surface
Transportation Efficiency
Act of 1991
(shifted highway and mass
transit decision to state and local
governments.)

"I can sit around that table at th expressing my opinion, and probably b [for being] a California than [fo — Norma

"He's not coming at this as he might if he were just a politician and a Democrat," said Jack Schenendorf, who was the Bush transition team's transportation adviser. "As secretary of transportation, he has a responsibility to the airlines, to the unions, to the traveling public. His own personal views are going to take a secondary position."

Whether Mineta operates more like a Democrat or a Republican matters little to Wascom. "It's irrelevant," Wascom said. "He is the perfect person to bridge any political differences that may exist [on transportation] policy."

The word that people use a lot in describing Mineta is "approachable." Years ago, when a woman named Jane Merrill left Mineta's congressional office to pursue graduate studies in San Diego, Mineta told her to look up a young school board member named Bob Filner. She and Filner married a few years later.

"He must meet thousands of people, but he never forgot her name and always told that story," said Filner, now a Democratic congressman from San Diego. "He's got that sense of always remembering names and relating to people right away. He's very popular among his colleagues."

World War II internment

Mineta answers questions with calm confidence, displaying a solid grasp of the intricacies of his department. His demeanor seems ruffled only when he discusses the time he spent as a child at Heart Mountain detention camp during World War II.

Mineta was just a boy when authorities rounded up his relatives in their San Jose home during World War II. Mineta was still wearing his Cub Scout uniform and carrying a baseball bat, which a military policeman confiscated, saying it might be used as a weapon. Mineta boarded a train that would take his family to a Wyoming internment camp, where they lived for the remainder of the war.

"The psychological warfare started right away," Mineta said. "No charges filed against anybody, but 120,000 people were behind barbed wire, under armed guard."

In 1988, with Mineta's leadership, then-President Ronald Reagan made reparations to those interned. The secretary obviously still carries memories of that experience. When he spoke with former White House press secretary Marlin Fitzwater about taking the secretary's job, Fitzwater had a warning: "He said, 'Norm ... you being the only Democrat, you'll probably face some social ostracism,'" Mineta recalled. "I said, 'Marlin, what the hell do you think I've experienced all my life?'"

On the other hand, Mineta said, "the greatness of this country" is illustrated by the fact "that 50 years ago that happened, and today I'm here as a member of the president's Cabinet twice over."

Those who lobby Congress on transportation issues say Mineta faces many challenges. At the top of the list is America's love-hate relationship with airlines. Long delays and cancellations constantly upset America's overcrowded aviation system, and without new airports and runways,

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abinet meetings,

hided more

eing] a Democrat."

lineta

the problem promises to become worse as the flying public increases by a projected 30 percent over the next decade. In June the FAA outlined a decade-long plan that would shift control of planes to a satellite-based system, require ground-based systems with digital radar and better software, and give pilots moving video maps that will show nearby planes in the air and on the ground. Mineta also has said he wants to speed up environmental studies for new runways and study whether air traffic controllers are too quick to order delays because of bad weather.

One national transportation expert believes Mineta should begin thinking about aviation construction in new ways, perhaps by being willing to pay nearby homeowners and businesses for their inconvenience.

"Those of us who benefit from flying should probably pay people near airports for the trouble of putting up with more noise," said Peter Van Doren, who specializes in transportation for the Cato Institute.

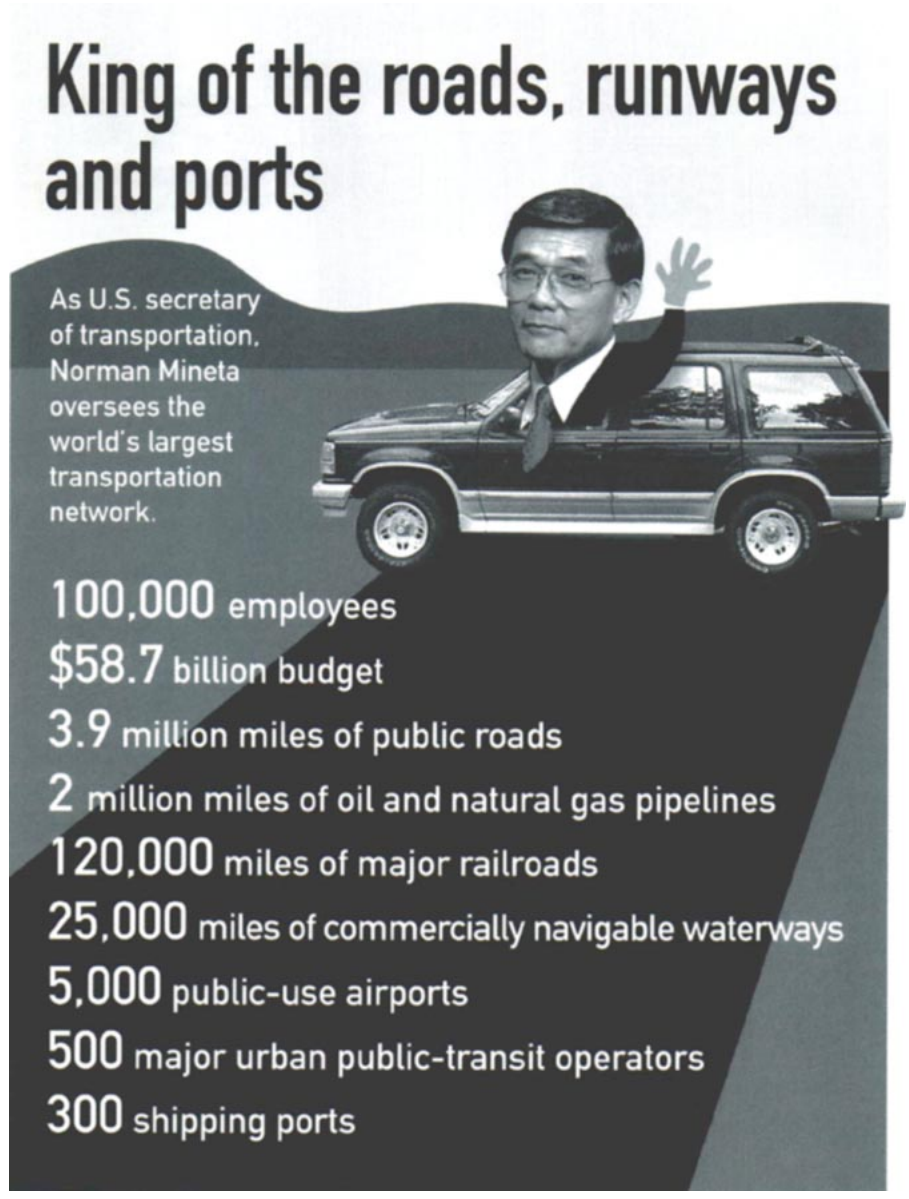
Mineta will no doubt be forced to consider other unconventional solutions, such as "congestion pricing" at the nation's busiest airports. Under "congestion pricing," airports would auction to the highest bidders the right to take off and land at peak hours. Such a policy would likely favor larger, more established airlines over smaller, regional ones.

Mineta believes delays may be on the rise in part because air traffic controllers are "overly cautious" when directing planes in stormy regions. He has asked the Federal Aviation Administration to look at air-traffic control practices in bad weather. Mineta may also get pressure from transportation advocates to build toll roads to bypass congested highways. This already happens in California (see *California Journal*, June 2001), but some worry that the ability to pay one's way out of rush-hour traffic will create a class system on the nation's roads.

Finally, safety advocates are pressing Mineta to spend more on the obscure National Highway Traffic Safety Administration, which was responsible for overseeing the recall of Firestone tires and for setting standards to make SUVs more stable. Safety advocates say previous secretaries often shifted money to the agency only when a highly publicized event forced them to act.

"It's one of the least funded agencies in the department, but their problems are the biggest that the department has," said Judie Stone, president of Advocates for Highway and Auto Safety. Stone first worked closely with Mineta when he was chairman of a transportation subcommittee that dealt with drunken driving, seat belt use and other safety issues. "He was someone we could talk to," said Stone. "But we have a ways to go on these issues before we can see if he's done the job."

Dana Wilkie is a Washington, D.C., correspondent for Copley News Service and a frequent contributor to California Journal. *Comments on this article may be sent to* **edit@statenet.com.**


King of the roads, runways and ports
As U.S. secretary of transportation, Norman Mineta oversees the world's largest transportation network.
100,000 employees
$58.7 billion budget
3.9 million miles of public roads
2 million miles of oil and natural gas pipelines
120,000 miles of major railroads
25,000 miles of commercially navigable waterways
5,000 public-use airports
500 major urban public-transit operators
300 shipping ports

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Testing,

California has embarked on an educational testing program that has some teachers, administrators, parents and students up in arms. Is a backlash brewing?

By Sylvia Fox

Scratch nearly anyone connected with education these days, and you'll likely get an opinion on "testing." Teachers, parents, administrators, students, politicians — most folks have a definite view.

Testing in this case doesn't mean a snap quiz thrown at students to see who bothered to read a history assignment. It isn't an academic term. It is a political term — the preferred buzzword for "accountability." Hence, the current battle over testing — whether it is good or bad, helpful or hurtful — is intensely political. Caught in the middle are students and their parents, many of whom fear that testing programs have skewed the way children are taught and that statewide test results play too prominent a role in evaluating overall student performance.

Few argue that measuring student proficiency is a bad idea, or that educators ought not to be held accountable. Rather, the controversy over testing centers on California's methods of measuring student proficiency and whether a single exam ought to determine academic fate. There also are broad concerns among educators — both here and nationally — that how well students test now defines the quality of the education they receive.

Advocates of statewide testing programs argue that schools must be able to demonstrate — in measurable ways — that students understand the basics. They also argue that critics have been too quick to judge the results and that not enough time has elapsed to adequately evaluate the findings. Opponents *counter that testing has warped school culture by corrupting what takes place in* the classroom and that test proficiency is emphasized at the expense of learning. They also charge that it is heavily skewed against non-English speaking students.

At the heart of this quarrel are two statewide tests: the SAT-9, administered through the Standardized Testing and Reporting (STAR) Program, and a high school "exit exam" required for graduation.

STAR bright?

Introduced in 1997, the STAR program is part of an education-reform package and costs the state $65.6 million annually to administer. Its centerpiece is the Stanford-9 basic skills test (SAT-9) given in English to all California public-school students in grades 2 through 11 and designed to compare California students with their peers nationally. SAT-9 is a stopgap, however, while the state develops a more parochial California Standards Test to align with state academic standards. The California Standards Test currently is being given as a trial

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Illustration by Jon Krause

run and is scheduled to "go live" in 2003.

The STAR program involves more than a test, however. It also has a carrot attached in the form of cash payments designed to reward schools and teachers whose students do well on the tests. In this vein, STAR distributes $677 million in three categories. First, schools themselves win cash awards by increasing SAT-9 scores, based on an Academic Performance Index, or API, ranking of all public schools. Second, teachers and all full-time staff at eligible schools, including secretaries and custodians, receive bonuses that this year totaled $591.32 per employee. To be eligible, at least 95 percent of the students in an elementary school must have taken the test, 90 percent in a high school. Schools that fall short are disqualified and lose their ranking for two years. Finally, a more substantial award is targeted exclusively at schools in the bottom half of API

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Kerry Mazzoni, state Secretary for Education

"They were robbed of their futures. We let o
teach the way they wanted. It didn't work.
It's tragic and it's inexcusable. Now we have

rankings. Teachers at these schools can earn from $5,000 to $25,000 if their school shows the greatest gains in test scores over a two-year period.

The second test is a statewide high school "exit exam" added in 1999. It was given to ninth graders for the first time this year, with results to be released in mid-September. Still another high school test, the Golden State Examination, is given to honor students in various subject areas in order to establish eligibility for scholarship awards from the governor.

Each test has been the subject of controversy.

Defenders and critics

The current testing program, supporters contend, is a necessity born of circumstance and, as such, it has full-faith backing from Democratic Governor Gray Davis and his administration — as it did from Davis' predecessor, Republican Pete Wilson. Administration officials contend the current testing program arose because the state had to find a way to measure progress.

Standardized testing — the foundation for "accountability" — came after years of evidence that high school graduates did not possess appropriate skills or education, said Kerry Mazzoni, Davis' secretary for education. "Students were being tested, but they weren't taking the same tests, and districts weren't required to give the same data," she said. According to Mazzoni, the best way to get a baseline of information was to start with a test that conformed to national norms. Hence, SAT-9.

It was critical, Mazzoni said, to move away from the accepted notion that if input (teaching, resources and dollars) is good then the output will be good. But, she argued, that concept didn't work. In addition, the former Bay Area legislator said, large numbers of children were not being served, and excuses were made for various groups (such as those for whom English is a second language) who then weren't held to a high standard.

"They were robbed of their futures," Mazzoni said. "We let our teachers teach the way they wanted. It didn't work. It's tragic and it's inexcusable. Now we have to keep focused."

Critics answer with a laundry list of complaints and warnings, chief among them the notion that a single test can never work in a state as diverse as California. They also see the STAR program as a political rather than academic solution, and they view as troublesome the financial incentives given to teachers and schools based on test scores generated from a single source. They complain that the tests themselves are flawed, take up too much instructional time, pit teachers against one another, and hurt students — especially bilingual students. Finally, they argue that the Golden State scholarship exam reflects nothing more than family wealth, placing a majority of scholarships in the hands of students from high-income zip codes.

Bob Schaeffer, public education director for FairTest, a national coalition to fight standardized testing, says California is the nation's flagship of testing overkill. That assessment is shared by Bob Raines, who runs the testing unit for San Diego Unified School District. "We're testing kids to death in this state right now," said Raines.

Some critics argue that a backlash against testing is growing among parents and students, but evidence to back this claim is scanty. The primary mode of protest — opting out of the test altogether — is an option granted under state law and has cropped up in various places over the past two years, notably in San Diego County. But the message is mixed, and it is unclear whether these protests mark the beginning of a backlash against testing in general or are isolated revolts based on problems that can be fixed.

Another measure of discontent is found among the debris left by various national polls, but those results, too, deliver a mixed message. For instance, a poll taken in October 2000 by Public Agenda showed that parents strongly support higher academic standards and don't believe standardized tests are too difficult or dominate classroom instruction. But the poll also revealed that a majority of parents feel that schools place too much emphasis on test scores, and they object to a single test being used to determine promotion or graduation. Along those same lines, a poll last year by the American Association of School Administrators found that 63 percent of parents disagreed with the notion that a year's worth of academic progress can be summarized by a single test.

The English problem

The most immediate form of protest is to "opt out" — a decision made by parents who refuse to have their children tested. In San Diego County, this tactic has been used mostly by parents whose children are not proficient in English.

Part of the criticism in California has focused on the fact that the SAT-9 is administered in English, even to students who lack English proficiency. In San Diego during the 2000 school year, this caused something of an open revolt among Spanish-speaking or bilingual parents once they learned that their children did not have to take the test.

"It's a no-brainer," said Susan Harmon, a special education teacher in Contra Costa County and co-founder of CalCARE, which is affiliated with FairTest. "How can kids test well in a language they can't speak?"

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achers

eep focused."
Kerry Mazzoni

As a result, many San Diego schools with high numbers of Latino students had low numbers of test-takers. Balboa Elementary, bordering National City, had 85 percent Latino students, about 62 percent of whom are limited in English. In 2000, nearly 46 percent of Balboa parents refused to have their children tested. Neighboring Emerson/Bandini Elementary, with equally high numbers of Latino students, had 38 percent opt out. In fact, almost all San Diego South Bay elementary schools experienced high numbers of "opt outs" in 2000, ranging from 13 percent to Balboa's 46 percent. As a result, 13 San Diego schools were declared ineligible for incentive awards this year because "excessive" numbers of parents would not let their children be tested.

But the "opt out" revolt lost much of its steam in the 2000-2001 school year. According to Sally Bennett, San Diego Unified's assistant director for standards assessment and accountability, the district worked with schools to encourage testing, explaining to parents how opting out hurts individual schools. "They explained to parents that it was not high stakes for individual students, that this kind of test would not make their children be retained," Bennett said.

The turnaround was dramatic. In 1999-2000, 3,555 San Diego students opted out of testing. This year 1,201 declined to take the test, a drop of nearly two-thirds. At Balboa, where nearly half of the parents opted out in 2000, no parents chose to keep their children out in 2001. Only two students at nearby Emerson-Bandini declined the test, compared with 370 the previous year.

Part of the solution was a second assessment test in Spanish, instituted in 1999 — the SABE 2, required for students who have been in the district for less than 12 months, speak Spanish as a primary language and have limited English proficiency. Although these test results are not used for API school rankings, they do measure achievement in a language more suited to the student.

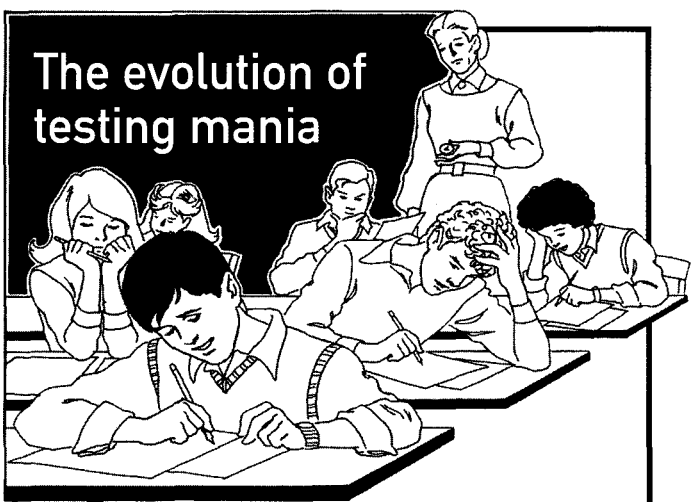
Although opting out gained some notoriety in San Diego, the tactic hardly caused a ripple elsewhere. In 1999-2000, only 56,000 parents statewide — or a little more than 1 percent — refused to have their children tested. The number of exemptions for 2000-2001 will be released in October.

Exit exam or drop-out exam?

The high school exit exam has caused its own set of controversies. Expected to be in place for the class of 2004, the exam was given for the first time this year to the ninth graders who will make up that graduating class. It is designed to measure the minimum set of academic skills needed to graduate from high school, and students have several chances to pass both its verbal and math portions during their high school careers. Still, a high failure rate for this first test is predicted when scores are released in mid-September, a result that won't surprise one test critic — California Federation of Teachers President Mary Bergan.

"It never should have been given to them," Bergan said. "It's an exit exam [for high school]. They are being tested on a curriculum standard that wasn't in place for them until now."

California Teachers Association President Wayne Johnson agreed. The exit exam is "poorly designed, not fully tested, and maybe 60 percent will fail," he said. Johnson said the CTA is not opposed to the concept of an exit exam, but "this exam was a disaster." Again, the students most harmed by the test, according to Johnson, were that those with limited proficiency in English. Teachers worry those students will be so discouraged they will decide to drop out of school. Johnson said 1.2 million students will not pass the math portion this year because it tested math that isn't required of ninth graders.



The evolution of testing mania

1997
- SB 376 launches Standardized Testing and Reporting (STAR); initiates testing of all students in English using nationally-normed test in reading, spelling, written expression and mathematics for grades 2-8; in reading, writing, mathematics, history-social science and science for grades 9-11; provides funding for testing to districts; requires individual student, school, district, county and state results.
- AB 748 authorizes development of a test of English language development in listening, reading, speaking and writing skills.

1998
- State board-adopted STAR test is administered.

1999
- California standards tests in language arts and mathematics added to STAR program to test state content standards; designated test in Spanish added for limited English students.
- Development of California HIgh School Exit Examination (CAHSEE) authorized by SB 2X.

2000
- California Reading List added to STAR report.

2001
- Standards tests in history-social science and science, grades 9-11; and writing tests, grades 4 and 7, added to STAR.
- California English Language Development Test (CELDT) administered.

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Administration officials concede that the test procedure was flawed this year and have taken steps to correct the problem. Ninth graders took the exam on a voluntary basis, as prescribed by law. But testing experts have argued that testing only part of a statewide class (75 percent of ninth graders did so in 2001) skews test data.

"We need to administer the test to all of the kids at the same time," said Bob Spurlock, assistant education secretary for assessment and accountability. To correct this problem, Spurlock said, the administration has sponsored a bill (AB 1609) to eliminate ninth graders from the exam.

Although many critics don't like the notion of standardized testing, FairTest's Bob Schaeffer said his group is not asking that all tests be repealed, just not relied upon as the sole judge of student success. "One standards test can't portray the difference in school quality between Beverly Hills and ... the Central Valley or Watts or L.A.," he said. "It doesn't factor in types and amount of resources, or teacher quality."

Meanwhile, the California Teachers Association won't support any testing legislation until high school exit exam and standardized testing issues are resolved. In July, the National Education Association voted to support laws allowing parents to opt out of standardized testing. They also approved a resolution to encourage a variety of assessments. Supporters of FairTest are hoping for a national boycott against standardized testing next spring, said CalCare's Harmon, who called it "a mass refusal."

Teacher protests

In addition to the activity of their union, individual teachers have shown their disapproval by rejecting the $591 incentive checks, calling them "blood money"and "bribery." Other teachers and staff reportedly donated the money to various scholarships and charities. Some students voiced displeasure as well by creating bubble-dot artwork with their answer sheets, organizing boycotts or drawing a line through one column of answers.

Even the big-buck incentive program hit a snag. Roughly $100 million was budgeted for bonuses of up to $25,000 for individual teachers at low-performing schools, but distribution of those checks was delayed for months by a lawsuit filed by teachers at a Sacramento elementary school who challenged the two-year requirement for improvement in test scores. The state won the case, but the teachers have appealed.

Education Secretary Mazzoni was quick to note that while the STAR program isn't perfect, it provides a starting point. She pointed to changes such as streamlining the tests, eliminating redundant tests and reducing awards. The Legislature, too, she said, is working on incremental fixes. Among them, is a bill (SB 233) to extend the STAR program to 2005, mandate a math test for eighth and ninth graders who haven't taken algebra, reduce teaching time, require the test to align with school curriculum, and consolidate or merge some tests; and a bill (AB 1609) to review the high school exit exam, allow the State Board of Education to postpone consequences for students who fail it and eliminate 9th graders from taking the exam.

"When you reward [teachers] with bonuses or punish them by publishing test scores, we deprive children of teachers who know how to turn a classroom into a place of learning rather than a place of drill."
— Edna Mitchell, Mills College education professor

Mazzoni argued for time, saying that scores have improved and that most critics will be satisfied after about three years of sustained higher scores.

"It may take six years to get there," she said, "but that's when the naysayers may be silenced. We truly are trying to have a smart system."

Yet unresolved in the debate over testing is a question posed by some educators and parents: What is the relationship between testing and a quality education?

Virtually none, said Edna Mitchell, a professor of education at Mills College in Oakland and director of the Women's Leadership Institute at Mills.

"Testing is the lowest level of measurement," said Mitchell, who does not oppose testing but questions its prominence. "It does not evaluate how children approach thinking. And it does not measure, or have any respect for the skills of problem-solving and inquiry. It teaches a child to look for a reward by getting the right answer, and by feeling that achievement and success come from turning in a paper where you fill in bubbles."

The fact that a test doesn't measure everything, responded the administration's Spurlock, "doesn't devalue what it does measure. We need to know what schools are doing."

Yes, said Mitchell, but testing puts too much pressure on teachers. "When you reward [teachers] with bonuses or punish them by publishing test scores," she said, "we deprive children of teachers who are responsive and interactive, and who know how to turn a classroom into a place of learning rather than a place of drill. It narrows the achievement process."

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Bay Area brawl

by Marc Sandalow

For most of the country, the Bay Area stands out as a monolith of progressive ideology, so identified by its brand of politics that "San Francisco Democrat" is embraced by Republicans as an epitaph.

Democrats represent almost every parcel of land from Santa Cruz to the Oregon border. Bill Baker, a Newt Gingrich-styled conservative, couldn't hold his congressional seat in the region's most Republican district. Former Congressman Tom Campbell, a pro-choice, pro-environment, anti-gun Republican, is back teaching law at Stanford. So it comes as a surprise that the two rising stars of the Bay Area congressional delegation — San Francisco's Nancy Pelosi and Contra Costa's Ellen Tauscher — are openly at war.

Pelosi's bid to become the first woman to break into the ranks of House leadership has the support of virtually all of California's 32 Democratic representatives. But not Tauscher. Meanwhile, Pelosi supporters in Sacramento — most notably state Senate pro Tem John Burton — have threatened to tinker with Tauscher's fragile district as retribution. The battle spilled onto the front pages *Roll Call* — the newspaper of Capitol Hill — with an eye-raising banner headline: "Pelosi Denies Whip Threats: Tauscher Charges Intimidation."

The roots of the Pelosi-Tauscher battle are a matter of dispute. Some say that Tauscher sees Pelosi as competition. Some believe Pelosi feels betrayed after helping Tauscher get elected in 1996.

Tauscher and Pelosi, whose districts are separated by just 15 miles, represent two extremes of the Democratic Party. Pelosi comes from among the nation's most liberal districts, where fewer than one in six cast ballots for George W. Bush. She has a 100 percent voting record from Americans for Democratic Action. Across the Bay and through the Caldecott Tunnel, Bush won four times as many votes in Tauscher's suburban district, home to the Bay Area's most conservative voters. Tauscher, one of just four Democrats to vote in favor of Bush's tax plan, is vice president of the centrist Democratic Leadership Council and member of the moderate "Blue Dog" Democrats.

"They come from different constituencies," said U.S. Senator Dianne Feinstein, who is loyal to both.

To some observers, who have witnessed the animosity that extends to their staffs, more is going on. The raw nerves have been exposed because of the race for Democratic Whip, which may begin as early as this fall when U.S. Representative David Bonior is expected to step down from the post to run for governor of Michigan.

Pelosi has been angling for the position for two years and appears to be the front-runner. Tauscher has endorsed Pelosi's only opponent, Maryland Democrat Steny Hoyer, a good personal friend and a longtime political ally.

"I want a more fiscally responsible moderate in leadership. I believe that is the only way we achieve the majority," Tauscher said. "That is the face that I want to show the country."

Yet there are many members more conservative than Tauscher who are supporting Pelosi. Gary Condit (D-Ceres) is a key part of Pelosi's team (which led some Pelosi critics to speculate as to the motives behind her vehement defense of Condit's character in the early stages of the Chandra Levy controversy.) And there are certainly liberals — including the head of the House Progressive Caucus, the Congressional Black Caucus and the Hispanic Caucus — who are supporting Hoyer.

> "Her doing this says to me she is a very bitter person."

"I've searched my heart why Ellen Tauscher would not support Nancy Pelosi for whip," said U.S. Senator Barbara Boxer, a firm Pelosi backer. "I cannot figure out in my wildest imagination as to why she is not excited at this history-making prospect. Her doing this says to me she is a very bitter person."

Most Democrats seem embarrassed by the public rift. In Sacramento, meanwhile, those who will make the ultimate decision say reapportionment will not be swayed by such internecine battles. "It's not going to happen," said state Senator Don Perata (D-Oakland), who chairs the panel that is drawing new boundaries. "We're not going to waste a Democratic seat for some political infighting in Washington."

Tauscher, however, was quite angry over the first draft of her district, which was stripped of the Lawrence Livermore Labs and friendly, centrist Republicans who live just over the Berkeley Hills.

Feinstein shrugged off news accounts of hardball politics, saying such fights suit nobody's purpose. "I don't believe it is in John Burton or anyone's interest to do this. They want to see more Democrats elected," she said. "I think they recognize this is a big tent party."

A tent with some noisy disputes.

Marc Sandalow is Washington bureau chief for the San Francisco Chronicle. *Comments on this column may be emailed to* **edit@statenet.com.**

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Free speech versus p

"Get off of our property!"

That was the demand of the Chico Waremart (now renamed Winco) store manager in 1998 when he told paid signature solicitors from Progressive Campaigns, a professional petition company, to leave the premises. Petitioners had set up shop just outside the store's entrance and were asking customers if they would sign petitions. The Waremart manager said he had received complaints from customers about the rude and aggressive attitude of Progressive petitioners. Moreover, Waremart's corporate policy prohibited petitioning or soliciting on its properties. The petitioners, on the other hand, argued they had a legal right to collect signatures there because of a 1979 court case, *Pruneyard Shopping Center v. Robins*.

In 1979, a liberal California Supreme Court led by Chief Justice Rose Bird ruled in *Pruneyard* that the California Constitution protected the reasonable exercise of speech and petitioning in a privately owned shopping center. The shopping center owner, however, had rights as well and could establish reasonable rules regarding time, place and manner of the petitioning. The case was appealed to the United States Supreme Court, which upheld *Pruneyard* in 1980, noting that the California Constitution grants its citizens individual liberties more expansive than those provided by the federal Constitution and that property rights and free speech rights of shopping center owners were not abridged by allowing petitioners access to these malls. The U.S. Supreme Court emphasized that *Pruneyard* did not apply to "an individual homeowner or proprietor of a modest retail establishment."

In a case now before the California Supreme Court, solicitors who seek signatures on ballot petitions once again are up against retail businesses who want to protect their private property rights. The two sides squared off 22 years ago, with solicitors emerging on top. Aside from First Amendment arguments, at issue are questions about the changing nature of a community and the ability of the law to recognize and adapt to those changes.

By Charles M. Price

Waremart v. Progressive

The Waremart case was initially heard in 1999 in Butte County Superior Court by Judge Roger Gilbert, who ruled on behalf of the plaintiff, Waremart, and its private property rights. Progressive appealed but, in December 2000, the three-judge Third District Court of Appeal unanimously upheld the lower court decision.

In its *Waremart* decision, the state appellate court drew a sharp distinction between a single, free-standing store and a shopping mall. The justices stated that the U.S. Supreme Court in upholding *Pruneyard* implicitly recognized that downtown city business districts, as places for public congregation and free speech activities, have increasingly been supplanted by suburban shopping malls with many individual stores, and that a few orderly signature solicitors or

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handbill distributors wouldn't interfere unduly with the commercial activities of the shopping center. The opinion also defined Waremart as a "large warehouse-style" supermarket in a single, free-standing building with no access by public sidewalk.

"Waremart does not provide amenities to the public, such as places to congregate, recreational activities, or a cinema," the opinion read. "The store has no meeting rooms, murals, artwork, information booths or bulletin boards for public use. There are no patios, plazas, picnic areas, parks, or gardens where people can socialize." The judges also noted that "signs prohibiting loitering are posted on the front of the building."

The panel reasoned that, unlike a Chico shopping mall located one block away, Waremart's only purpose is to sell merchandise efficiently. Thus, Waremart was acting within its constitutional rights in ordering petitioners off the property. Indeed, a few years earlier, in another appellate decision, the judges ruled that a Trader Joe's store in Santa Rosa was within its rights to order petitioners off its property because the establishment was just a store; it had no restaurant, nor places for people to congregate.

In April 2001, the California Supreme Court agreed to review the appellate court's *Waremart* decision, and that ruling is pending.

Wider implications

The implications of the Waremart case strike at the heart of ballot initiative petitioning, because the vast bulk of signatures for those petitions are gathered in and around shopping malls and "big box" megastores such as Waremart.

The initiative (and the referendum and recall) have been embedded

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If signature solicitors are barred from megastores, signature gatherers argue that the task of qualifying an initiative will be greatly impaired.

in the California Constitution since 1911 and, while these processes are sometimes controversial, they continue to receive strong public support. In the first half of the 20th century, when direct democracy was in its infancy, solicitors with clipboards in hand usually sought citizen signatures on public sidewalks in the commercial areas of downtown cities, outside public arenas and churches, or even by going door-to-door. With California's population only a few million, the number of signatures needed to qualify a petition (5 percent of the total vote cast for governor in the last election for initiatives and 8 percent for constitutional amendments) was manageable using these techniques.

But as the state's population soared, so did the number of signatures required to qualify petitions. In California today, it is necessary to collect hundreds of thousands of signatures (in just 150 days) to qualify a state initiative. As in earlier decades, the best sites for collecting signatures are places where people congregate. In 1920, that meant downtown; today, it is a shopping mall or a Wal-Mart, or outside a large-chain supermarket such as a Safeway or Raley's.

The current *Waremart* decision has wider implications because, although malls remain good locations for signature gathering, "big box" superstores may prove better hunting grounds. Many malls have experienced a decline in the number of shoppers, while self-contained superstores have seen an increase. In addition, these stores tend to be located in single, free-standing buildings far removed from public sidewalks. As Progressive sees it, megastores sell a wide variety of products and are, in effect, "mini-malls" and community gathering places.

If signature solicitors are barred from megastores, signature gatherers argue that the task of qualifying an initiative will be greatly impaired. According to Angelo Paparella, head of Progressive Campaigns, the appellate decision was "an incalculable blow to petitioning in the state — paid and volunteer."

Bill Arno, vice president of Arno Consulting, concurs and argues that it will make it exceptionally difficult to qualify petitions in California. Fred Kimball of the Kimball Petition Management Company says, "this issue is a big deal for us. That's why we're contributing to help pay the legal fees of Progressive's attorney. We see [the appellate court's decision] as chipping away at *Pruneyard*."

Raley's Supermarkets — a West Sacramento-based chain that also includes Bel Air and Nob Hill markets — currently requires prior approval for signature solicitors to petition outside its stores and then allows them only one day for signature gathering. This restriction is viewed as excessive by Arno and has become the subject of yet another case before the state Supreme Court.

"This Raley's is a huge stand-alone building, which is sort of a community meeting center because it has a large bulletin board with various public announcements," said Arno. "In *Pruneyard*, the court stated that private shopping centers can impose rules dealing with the time, place, and manner for petitioners so long as these were the least restrictive means available."

The courts thus far have disagreed, with the Third District Court of Appeal ruling in the Raley's case that a bulletin board and a few benches do not make a public place as defined by *Pruneyard*. Petitioners have appealed to the Supreme Court.

The court also said in *Pruneyard* that the decision did not apply to a "modest retail establishment." In this day and age of commerce, that phrase remains ill-defined.

For instance, Chico's Wal-Mart contains a McDonald's fast-food restaurant. Does this mean that petitioners have a legal right to collect petitions at Wal-Mart because of its restaurant, but not at Waremart? And does Waremart's take-out delicatessen counter and take-and-bake pizza counter mean that it, too, has a restaurant? If a megastore has a public bulletin board or a few benches, does it qualify as a community center? In many places throughout California, megastores are located in close proximity to malls and are part of a general shopping area. Should these stores be treated differently by the court than stores housed within a mall?

These are some of the issues the court must sort out in *Waremart*, but they go beyond the narrow conflict between property owners and petitioners. They also involve the changing nature of a community, and the outcome will determine how well the law itself can adapt to those changes.

Historically, the state Supreme Court has been very protective of the initiative process — affirming, for instance, the constitutionality of term limits (Proposition 140) by saying that "the initiative power must be liberally construed to promote the democratic process. Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise."

But, six of the state Supreme Court's seven justices were appointed by Republican governors. Clearly, the current court is "business-friendly" and could focus exclusively on private property rights in its *Raley's* and *Waremart* decisions. For Progressive Campaigns and other petitioners, the worst case scenario would be to have the state Supreme Court chip away at *Pruneyard*.

Charles M. Price is a professor of political science at California State University, Chico, and a co-editor of the California Journal Annual. *Comments on this story may be sent to* **edit@statenet.com.**

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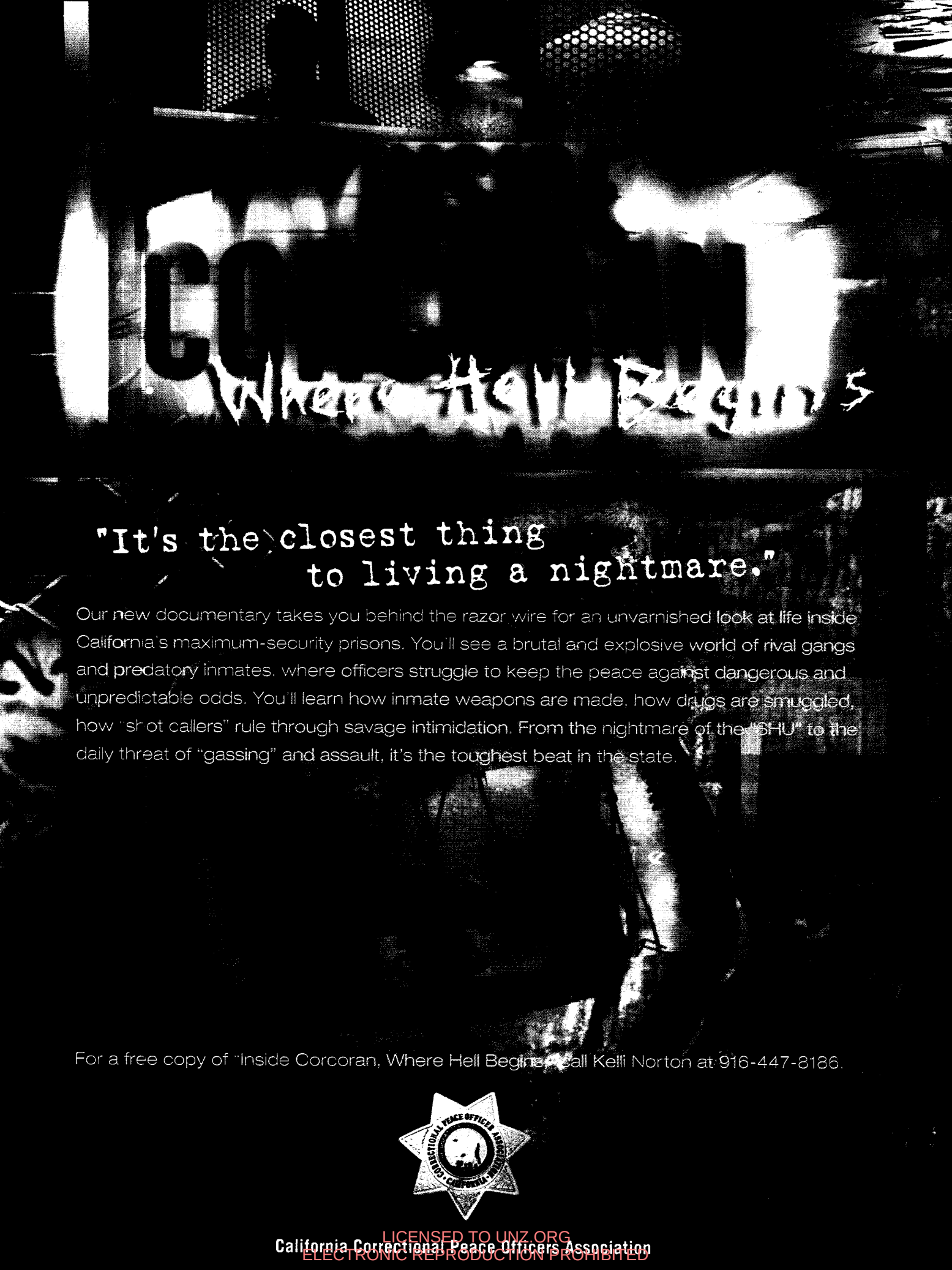

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